

1 Patrick R. Leverty, Esq., NV Bar No. 8840
2 William R. Ginn, Esq., NV Bar No. 6989
3 LEVERTY & ASSOCIATES LAW CHTD.
4 832 Willow Street
5 Reno, Nevada 89502
6 Ph. (775) 322-6636
7 Fax: (775) 322-3953
8 *Attorney for Plaintiff*

9 (Additional Counsel on Signature Page)

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 JORDAN MICELI, derivatively on behalf
13 of GENIUS BRANDS INTERNATIONAL,
14 INC.,

15 Plaintiff,

16 v.

17 ANDY HEYWARD, ROBERT L.
18 DENTON, JOSEPH DAVIS, P. CLARK
19 HALLREN, MICHAEL KLEIN,
20 MARGARET LOESCH, LYNNE
21 SEGALL, and ANTHONY D.
22 THOMOPOULOS,

23 and

24 GENIUS BRANDS INTERNATIONAL,
25 INC.,

26 Nominal Defendant.

Case No. 3:21-cv-132

**VERIFIED STOCKHOLDER
DERRIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff Jordan Miceli (“Plaintiff”), by his undersigned attorneys, derivatively and on behalf of Nominal Defendant Genius Brands International, Inc. (“Genius” or the “Company”), files this Verified Shareholder Derivative Complaint against Defendants Andy Heyward (“Heyward”), Robert L. Denton (“Denton”), Joseph Davis (“Davis”), P. Clark Hallren (“Hallren”), Michael Klein (“Klein”), Margaret Loesch (“Loesch”), Lynne Segall (“Segall”) and Anthony D. Thomopoulos (“Thomopoulos”) (collectively, the “Individual Defendants,” and together with Genius, the “Defendants”) for breaches of their fiduciary duties as directors and/or officers of Genius, unjust enrichment, waste of corporate assets, and for violations of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). As for Plaintiff’s complaint against the Individual Defendants, Plaintiff alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls, and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Genius, legal filings, news reports, securities analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a shareholder derivative complaint brought in the right, and for the benefit, of Genius against certain of its officers and directors seeking to remedy the Individual Defendants’ wrongdoings committed from March 17, 2020 through July 5, 2020, both dates inclusive (the

1 “Relevant Period”).2. Genius is a content and brand management company based in California
2 and incorporated in Nevada. The Company specializes in the creation and licensing of multimedia
3 content for toddlers and tweens. Recent, and relevant, endeavors of the Company include the
4 launch of (1) “Rainbow Rangers,” an animated television program for children; (2) “Kartoon
5 Channel!” a wholly-owned media distribution outlet; and (3) “Stan Lee Universe,” a joint venture
6 which owns and is attempting to utilize the late comic book writer Stan Lee’s unreleased
7 intellectual property – work he created after his time with Marvel.
8

9 3. Immediately preceding the Relevant Period, the Company’s stock price was
10 steadily trading at less than \$1.00 per share. As a result, Genius was at risk of being delisted from
11 the NASDAQ.
12

13 4. On March 30, 2020, the Company filed its annual report on Form 10-K for the
14 fiscal year ended December 31, 2019 (the “2019 10-K”). Pursuant to the 2019 10-K, Genius
15 incurred an operating loss each fiscal quarter from its inception due to both skyrocketing costs and
16 expenses in the short term and its inability to create reliable and significant revenue streams in the
17 long term. The 2019 10-K indicated that due to these problems, the Company would not be able
18 to continue to operate if it did not secure additional financing.
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20 5. On March 13, 2020, and throughout the Relevant Period, defendant Heyward and
21 the Individual Defendants aggressively promoted Genius’s products, including Rainbow Rangers,
22 the Kartoon Channel!, and the Stan Lee Universe, by way of repeated materially false and
23 misleading statements and omissions. The Company utilized predatory promotional tactics aimed
24 towards retail “Robinhood investors,” in order to artificially pump up the value of the Company’s
25 share price.
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1 6. For example, the Company issued a press release on March 17, 2020 titled
2 “Nickelodeon Expands Daily Broadcasts of Genius Brand International’s Hit Preschool Series,
3 Rainbow Rangers” (the “March 17 Rainbow Press Release”) announcing Nickelodeon’s decision
4 to increase the broadcasts of Rainbow Rangers to 26 airings per week. However, in reality, this
5 was not the case. On June 5, 2020, Hindenburg Research published a report entitled “A
6 Bagholder’s Guide to Why We Think Genius Brands Will Be a \$1.50 Stock Within a Month” (the
7 “Hindenburg Report”) which reported that Nickelodeon was actually only broadcasting Rainbow
8 Readers *nine* times per week at unfavorable time slots.

10 7. Further, the Company issued press releases on May 13, 2020 and June 12, 2020,
11 calling its new Kartoon Channel! “Netflix for kids, but free” and claiming it to be “fully ad-
12 supported” and an “economic vaccine for Covid-19.” However, the Company’s affirmation that
13 “[t]here is no subscription fee” for Kartoon Channel! proved untrue. Upon its launch on June 15,
14 2020, Kartoon Channel! was only available to Amazon Prime members as an add-on channel for
15 an additional subscription fee.

17 8. Before the truth regarding the Individual Defendant’s tactics was revealed, the
18 Company’s stock price skyrocketed, increasing more than 5000% from March 16, 2020 to June 3,
19 2020. On June 3, 2020, after trading under \$1 per share for nearly a year, Genius stock reached a
20 closing high of \$7.93 per share, and during trading on June 4, 2020, the stock hit an intra-day high
21 of \$11.93 per share.

23 9. During the Relevant Period, Genius also conducted five separate direct offerings
24 of shares to certain “long standing investors” through which Genius sold more than 50 million
25 shares at below-market valuations while raising millions of dollars in liquid capital.
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1 10. On or about June 11, 2020, while the Company's stock was still trading at over
2 2000% more than it was trading for only three months earlier, Genius announced that "selling
3 shareholders" would resell approximately 60 million shares to the market.

4 11. On June 19, 2020, while the valuation of the Company's stock was still
5 approximately 1300% more than it had been in March, defendant Heyward sold 460,574 shares of
6 Genius stock at \$2.94 per share, for gross proceeds of approximately \$1.3 million. This sale came
7 only 11 days after defendant Heyward assured investors that he had not "sold a single share" of
8 Genius stock.
9

10 12. Through June and July 2020, as the Hindenburg Report, the Company's SEC
11 Filings, and the Company's press releases, among other things, revealed the truth regarding
12 defendant Heyward's and the Individual Defendant's false and misleading statements regarding
13 the Company's products, valuation, and growth potential, the Company's stock began to decrease
14 sharply. For example, Genius's stock closed at \$3.97 per share on June 9, 2020, dropping 50%
15 from its close of \$7.93 on June 3, 2020, only a few trading days earlier.
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17 13. Despite the sharp decrease in the Company's stock price, defendant Heyward's
18 and the Individual Defendant's hyperbolic claims regarding the Company's outlook, including
19 current commercial prospects, and future growth potential endured. On July 2, 2020, the Company
20 published a press release stating that it would be hosting a conference call with investors to
21 announce an "exciting" and "key" business development on July 6, 2020.
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23 14. The July 6, 2020 announcement, however, was merely that the Company was
24 starting a joint venture with Stan Lee, whom they had already announced a collaboration with
25 many months earlier. To the investing public, it was now clear that the Company did not, in fact,
26 have any significant update.
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1 15. After the July 6, 2020 announcement, the Company's stock price began to fall.
 2 On July 2, 2020, before the announcement, the price of Genius's common stock closed at \$3.55
 3 per share. By the close of trading on July 6, 2020, the price of the Company's common stock fell
 4 to \$2.66 per share, a drop in value of over 25%, on massive trading volume. In fact, the intra-day
 5 low on July 6, 2020, after the announcement was \$2.58, representing a drop in value of 27%.¹

6 16. During the Relevant Period, the Individual Defendants breached their fiduciary
 7 duties by personally making and/or causing the Company to make to the investing public a series
 8 of materially false and misleading statements about Genius's business, operations, and
 9 compliance. Specifically, the Individual Defendants willfully or recklessly made and/or caused the
 10 Company to make false and misleading statements to the investing public, including: (1) failing to
 11 disclose that Rainbow Rangers had not been renewed for a new season on Nick Jr.; (2) failing to
 12 disclose that Rainbow Rangers was airing on Nickelodeon only nine times per week, rather than
 13 26 times as Genius had previously represented, and at unfavorable time slots; (3) not disclosing
 14 that the economic terms of the deal with Llama Llama, and it did not own the intellectual property
 15 for Llama Llama and merely licensed it; (4) failing to disclose that a new wave of selling was
 16 likely to pummel the Company's stock as its financial backers sought to lock in profits; (5) posting
 17 Stan Lee's Superhero Kindergarten as content on Amazon as self-marketing for the show, which
 18 was a far less desirable accomplishment than previously represented; (6) implying Genius had the
 19 potential to, like the Walt Disney Company, earn billions of dollars in revenue from the box office,
 20 even though Genius had been attempting to launch a show with Stan Lee as early as 2011 and had
 21 no meaningful commercial success since that time, let alone the "billions of dollars" of success;

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 28 ¹ For example, approximately 17,607,500 shares of the Company's stock were traded just two
 business days prior, on July 1, 2020.

1 and (7) failing to disclose how Mr. Lee's passing would impact Genius's purported ability to
2 replicate Disney's success.

3 17. The Individual Defendants also breached their fiduciary duties by failing to correct
4 and/or causing the Company to fail to correct these false and misleading statements and omissions
5 of material fact to the investing public.

6 18. Additionally, in breach of their fiduciary duties, the Individual Defendants caused
7 the Company to fail to maintain adequate internal controls.

9 19. Furthermore, during the Relevant Period, defendant Heyward breached his
10 fiduciary duties by making a lucrative insider sale, obtaining proceeds of over \$1.3 million.

11 20. In light of the Individual Defendants' misconduct, which has subjected Genius
12 and its Chairman and Chief Executive Officer ("CEO") to being named as defendants in a federal
13 securities fraud class action lawsuit pending in the United States District Court for the Central
14 District of California (the "Securities Class Action"), the need to undertake internal investigations,
15 the need to implement adequate internal controls over its financial reporting, the losses due to the
16 waste of corporate assets, the losses due to the unjust enrichment of the Individual Defendants who
17 were improperly over-compensated by the Company and/or who benefitted from the wrongdoing
18 alleged herein, the Company will have to expend many millions of dollars.

21 21. In light of the breaches of fiduciary duty engaged in by the Individual Defendants,
22 most of whom are the Company's current directors, their collective engagement in fraud, the
23 substantial likelihood of the directors' liability in this derivative action and the CEO's liability in
24 the Securities Class Action, their being beholden to each other, their longstanding business and
25 personal relationships with each other, and their not being disinterested and/or independent
26 directors, a majority of Genius's Board of Directors (the "Board") cannot consider a demand to
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1 commence litigation against themselves on behalf of the Company with the requisite level of
2 disinterestedness and independence.

3 **JURISDICTION AND VENUE**

4 22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
5 because Plaintiff's claims raise a federal question under Section 14(a) of the Exchange Act, 15
6 U.S.C. § 78n(a)(1) and Rule 14a-9 of the Exchange Act, 17 C.F.R. § 240.14a-9.

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8 23. Additionally, diversity jurisdiction is conferred by 28 U.S.C. § 1332. Plaintiff and
9 Defendants are citizens of different states and the amount in controversy exceeds the sum or value
10 of \$75,000, exclusive of interest and costs.

11 24. This Court has supplemental jurisdiction over Plaintiff's state law claims
12 pursuant to 28 U.S.C. § 1367(a).

13
14 25. This derivative action is not a collusive action to confer jurisdiction on a court of
15 the United States that it would not otherwise have.

16 26. The Court has personal jurisdiction over each of the Defendants because each
17 Defendant is either a corporation incorporated in this District, or he or she is an individual who
18 has minimum contacts with this District to justify the exercise of jurisdiction over them.

19
20 27. Venue is proper in this District because Genius incorporated in this District, the
21 Individual Defendants have conducted business in this District, and Defendants' actions have had
22 an effect in this District.

PARTIES

Plaintiff

28. Plaintiff is a current holder of Genius common stock and has continuously held Genius common stock since March 13, 2020. Plaintiff is a citizen of Florida.

Nominal Defendant Genius

29. Nominal Defendant Genius is a Nevada corporation with its principal executive office located at 1900 Canon Drive, Floor 4, Beverly Hills, CA 90210. Genius's shares trade on the NASDAQ under the ticker symbol GNUS.

Defendant Heyward

30. Defendant Heyward is the Company's founder and has served as Genius's Chairman and CEO since 2013. Pursuant to the Company's Schedule 14A filed on April 14, 2020 (the "2020 Proxy Statement"), as of March 30, 2020, Heyward beneficially owned 3,019,949 shares of the Company's common stock, which, as of that date, represented 9.99% of the Company's outstanding shares of common stock. Per the closing price of the Company's common stock of \$0.28 on March 30, 2020, Defendant Heyward owned approximately \$845,586 worth of Genius stock.

31. For the fiscal year ended December 31, 2019, in exchange for his services as Genius's Chairman and CEO, defendant Heyward received \$967,994 in compensation from the Company. This includes \$411,500 in salary, \$287,500 in option awards, and \$124,000 in all other compensation.

32. On June 19, 2020, defendant Heyward sold 460,574 shares of Genius stock for \$2.94 per share, for a total of \$1,354,087 in proceeds. This sale occurred during the period when the Company was materially misstating information to the investing public to keep the stock price inflated, and before the scheme was exposed. Defendant Heyward made no purchases of Genius

1 stock during this period. Heyward's insider sale made with knowledge of material non-public
 2 information before the material misstatements and omissions were exposed demonstrates his
 3 motive in facilitating and participating in the scheme.

4 33. The Company's 2020 Proxy Statement states the following regarding Defendant
 5 Heyward:

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 7 *Andy Heyward, 71, has been the Company's Chief Executive Officer since*
 8 *November 2013 and the Company's Chairman of the Board since December 2013.*
 9 *Mr. Heyward co-founded DIC Animation City in 1983 and served as its Chief*
 10 *Executive Officer until its sale in 1993 to Capital Cities/ ABC, Inc. which was*
 11 *eventually bought by The Walt Disney Company in 1995. Mr. Heyward ran the*
 12 *company while it was owned by The Walt Disney Company until 2000 when Mr.*
 13 *Heyward purchased DIC Entertainment L.P. and DIC Productions L.P, corporate*
 14 *successors to the DIC Animation City business, with the assistance of Bain Capital*
 15 *and served as the Chairman and Chief Executive Officer of their acquiring company*
 16 *DIC Entertainment Corporation, until he took the company public on the AIM. He*
 17 *sold the company in 2008. Mr. Heyward co-founded A Squared Entertainment*
 18 *LLC in 2009 and has served as its Co-President since inception. Mr. Heyward*
 19 *earned a Bachelor of Arts degree in Philosophy from UCLA and is a member of*
 20 *the Producers Guild of America, the National Academy of Television Arts and the*
 21 *Paley Center (formerly the Museum of Television and Radio). Mr. Heyward gave*
 22 *the Commencement address in 2011 for the UCLA College of Humanities and was*
 23 *awarded the 2002 UCLA Alumni Association's Professional Achievement Award.*
 24 *He has received multiple Emmys and other awards for Children's Entertainment.*
 25 *He serves on the Board of Directors of the Cedars Sinai Medical Center. Mr.*
 26 *Heyward has produced over 5,000 half hour episodes of award winning*
 27 *entertainment, among them *Inspector Gadget; The Real Ghostbusters; Strawberry**
 28 *Shortcake; Care Bears; Alvin and the Chipmunks; Hello Kitty's Furry Tale*
Theater; The Super Mario Brothers Super Show; The Adventures of Sonic the
Hedgehog; Sabrina The Animated Series; Captain Planet and the Planeteers;
Liberty's Kids, and many others. Mr. Heyward was chosen as a director because
of his extensive experience in children's entertainment and as co-founder of A
Squared Entertainment.

34. Upon information and belief, defendant Heyward is a citizen of California.

Defendant Denton

35. Defendant Denton is the Company's Chief Financial Officer ("CFO"), having
 served since April 2018. Pursuant to the 2020 Proxy Statement, as of March 30, 2020, defendant
 Denton beneficially owned 71,726 shares of the Company's common stock. Per the closing price

1 of the Company's common stock of \$0.28 on March 30, 2020, defendant Denton owned
2 approximately \$20,083 worth of Genius stock.

3 36. For the fiscal year ended December 31, 2019, in exchange for his services as
4 Genius's CFO, defendant Denton received \$262,439 in compensation from the Company. This
5 includes \$215,625 in salary, \$25,000 in bonus, and \$21,814 in option awards.

6 37. The Company's 2020 Proxy Statement states the following regarding defendant
7 Denton:
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9 *Robert Denton, 60, has been our Chief Financial Officer since April 18, 2018. He*
10 *served as the Chief Financial Officer of Atlys, Inc. a next-gen media technology*
11 *company from 2011 to 2018. He has over 30 years of experience as a financial*
12 *executive, specifically in the entertainment industry. He began his career in 1982*
13 *with Ernst & Young handling filings with the Securities and Exchange*
14 *Commission, including initial public offerings. He left Ernst & Young in 1990 to*
15 *work as Vice President and Chief Accounting Officer for LIVE Entertainment, Inc.*
16 *In 1996, LIVE was acquired by Artisan Entertainment, Inc., and, in December*
17 *2000, Mr. Denton was promoted to Executive Vice President of Finance and CAO.*
18 *Mr. Denton also served as the COO of Artisan Home Entertainment, where he*
19 *directed all financial reporting, budgeting and forecasting, manufacturing and*
20 *distribution of the Home Entertainment Division. Mr. Denton left Artisan at the end*
21 *of 2003 and joined DIC Entertainment Corporation to serve as their Chief Financial*
22 *Officer. At DIC, he directed the three-year financial audit, due diligence and*
23 *preparation of the company's Admission Documents, and he was responsible for*
24 *all monthly financial reporting to the Board of Directors as well as the semi-annual*
25 *reporting to the AIM Exchange of the London Stock Exchange. Mr. Denton left*
26 *DIC in February 2009 after completing the acquisition and transition of DIC to the*
27 *Cookie Jar Company. Mr. Denton served as the Chief Financial Officer of Gold*
28 *Circle Films from 2009 to 2011. From 2009 to 2014, Mr. Denton also owned and*
operated three Assisted Living Facilities for the Elderly, to help better care for his
mother. Mr. Denton is a Certified Public Accountant and a member of the
American Institute of Certified Public Accountants and the California Society of
Certified Public Accountants.

38. Upon information and belief, Defendant Denton is a citizen of California.

Defendant Davis

39. Defendant Davis has served as a director of the Company since December 2013
where he has served as a member of the Board's Nominating committee since March 19, 2020.

Pursuant to the 2020 Proxy Statement, as of March 30, 2020, defendant Davis beneficially owned 13,335 shares of the Company's common stock. Per the closing price of the Company's common stock of \$0.28 on March 30, 2020, defendant Davis owned approximately \$3,734 worth of Genius stock.

40. For the fiscal year ended December 31, 2019, in exchange for his services as a member of Genius's Board, defendant Davis received \$20,000 in compensation from the Company. Defendant Davis' compensation consisted entirely of fees earned or paid in cash.

41. The Company's 2020 Proxy Statement states the following regarding defendant Davis:

Joseph "Gray" Davis, 77, has been a Director of the Company since December 2013. Mr. Davis served as the 37th governor of California from 1998 until 2003. Mr. Davis currently serves as "Of Counsel" in the Los Angeles, California office of Loeb & Loeb LLP. Mr. Davis has served on the Board of Directors of DIC Entertainment and is a member of the bi-partisan Think Long Committee, a Senior Fellow at the UCLA School of Public Affairs and Co-Chair of the Southern California Leadership Counsel. Mr. Davis received his undergraduate degree from Stanford University and received his Juris Doctorate from Columbia Law School. Mr. Davis served as lieutenant governor of California from 1995-1998, California State Controller from 1987-1995 and California State Assemblyman from 1982-1986. Mr. Davis was chosen as a director of the Company based on his knowledge of corporate governance.

42. Upon information and belief, defendant Davis is a citizen of California.

Defendant Hallren

43. Defendant Hallren has served as a director of the Company since May 2014, where he also serves as the Chair of the Audit Committee and as a member of the Compensation and Nominating Committee. Pursuant to the 2020 Proxy Statement, as of March 30, 2020, defendant Hallren beneficially owned 13,335 shares of the Company's common stock. Per the closing price

1 of the Company's common stock of \$0.28 on March 30, 2020, defendant Hallren owned
2 approximately \$3,734 worth of Genius stock.

3 44. For the fiscal year ended December 31, 2019, in exchange for his services as a
4 member of Genius's Board, defendant Hallren received \$20,000 in compensation from the
5 Company. Defendant Hallren's compensation consisted entirely of fees earned or paid in cash.

6 45. The Company's 2020 Proxy Statement stated the following regarding defendant
7 Hallren:
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9 *P. Clark Hallren, 58, has been a Director of the Company since May 2014. Since*
10 *August 2013, Mr. Hallren has been a realtor with HK Lane/Christie's International*
11 *Real Estate and since August 2012, Mr. Hallren has served as an outside consultant*
12 *to individuals and entities investing or operating in the entertainment industry.*
13 *From August 2012 to August 2014, Mr. Hallren was a realtor with Keller Williams*
14 *Realty and from August 2009 to August 2012, Mr. Hallren founded and served as*
15 *managing partner of Clear Scope Partners, an entertainment advisory company.*
16 *From 1986 to August 2009, Mr. Hallren was employed by JP Morgan Securities*
17 *Inc. in various capacities, including as Managing Director of the Entertainment*
18 *Industries Group. In his roles with JP Morgan Securities, Mr. Hallren was*
19 *responsible for marketing certain products to his clients, including but not limited*
20 *to, syndicated senior debt, public and private subordinated debt, public and private*
21 *equity, securitized and credit enhanced debt, interest rate derivatives, foreign*
22 *currency and treasury products. Mr. Hallren holds Finance, Accounting and*
23 *Economics degrees from Oklahoma State University. He also currently holds*
24 *Series 7, 24 and 63 securities licenses. Mr. Hallren was chosen as a director of the*
25 *Company based on his knowledge and experience in the entertainment industry as*
26 *well as in banking and finance.*

27 46. Upon information and belief, defendant Hallren is a citizen of California.

28 **Defendant Klein**

47. Defendant Klein has served as a director of the Company since March 2019 where
he has also served as a member of the Audit Committee and the Nominating Committee. Pursuant
to the 2020 Proxy Statement, as of March 30, 2020, defendant Klein beneficially owned 175,000
shares of the Company's common stock. Per the closing price of the Company's common stock

1 of \$0.28 on March 30, 2020, defendant Klein owned approximately \$49,000 worth of Genius
2 stock.

3 48. For the fiscal year ended December 31, 2019, in exchange for his services as a
4 member of Genius's Board, defendant Klein received \$12,500 in compensation from the
5 Company. Defendant Klein's compensation consisted entirely of fees earned or paid in cash.

6 49. The Company's 2020 Proxy Statement stated the following regarding defendant
7 Klein:
8

9 *Michael Klein, 72, was appointed as a Director of the Company since March 7,*
10 *2019. Mr. Klein is an accomplished executive, entrepreneur, and financier with*
11 *substantial experience in media and entertainment, investment banking,*
12 *professional sports, venture capital funding, and real estate. Prior to starting*
13 *Camden Capital Management, LLC (CCM), Mr. Klein, since 1996, has led Klein*
14 *Investment Group after assuming 100% ownership of (and renaming) Iacocca*
15 *Capital Partners, L.P., where he was Managing Partner from 1994 to 1996. From*
16 *1984 to 1993, Mr. Klein was a managing director at Bear Stearns & Company,*
17 *where he founded and co-directed the Media-Entertainment Group, and Gruntal &*
18 *Company, where he was Senior Managing Director and a member of the Executive*
19 *Committee. From 1974 to 1982, Mr. Klein supplied prime time and mini-series*
20 *content to the major television networks through his company, Michael Klein*
21 *Productions. Also, during that time, he was an owner and a senior executive officer*
22 *of the San Diego Chargers, an NFL Football franchise. Mr. Klein has significant*
23 *experience in the area of corporate financings. He has executed and participated in*
24 *financing deals, both public and private, ranging from \$5 million to over \$2 billion.*
25 *His real estate ventures in Southern California include a 600-acre development in*
26 *North San Diego, which he sold in various stages. He also has led several real*
27 *estate ventures in Southern California including the Water Gardens phase two in*
28 *Santa Monica. Mr. Klein was chosen as a director of the Company based on his*
knowledge and experience in the entertainment industry as well as in banking and
finance.

50. Upon information and belief, defendant Klein is a citizen of California.

Defendant Loesch

51. Defendant Loesch has served as a director of the Company since March 2015 and
was appointed as the Executive Chairman of Kartoon Channel! on June 5, 2020. Pursuant to the
2020 Proxy Statement, as of March 30, 2020, defendant Loesch beneficially owned 13,335 shares

1 of the Company's common stock. Per the closing price of the Company's common stock of \$0.28
2 on March 30, 2020, defendant Loesch owned approximately \$3,734 worth of Genius stock.

3 52. For the fiscal year ended December 31, 2019, in exchange for her services as a
4 member of Genius's Board, defendant Loesch received \$17,500 in compensation from the
5 Company. Defendant Loesch's compensation consisted entirely of fees earned or paid in cash.

6 53. The Company's 2020 Proxy Statement stated the following regarding defendant
7 Loesch:
8

9 *Margaret Loesch, 74, has been a Director of the Company since March 2015 and*
10 *the Executive Chairman of the Genius Brands Network since December 2016.*
11 *Beginning in 2009 through 2014, Ms. Loesch, served as Chief Executive Officer*
12 *and President of The Hub Network, a cable channel for children and families,*
13 *including animated features. The Company has, in the past, provided The Hub*
14 *Network with certain children's programming. From 2003 through 2009 Ms.*
15 *Loesch served as Co-Chief Executive Officer of The Hatchery, a family*
16 *entertainment and consumer product company. From 1998 through 2001 Ms.*
17 *Loesch served as Chief Executive Officer of the Hallmark Channel, a family related*
18 *cable channel. From 1990 through 1997 Ms. Loesch served as the Chief Executive*
19 *Officer of Fox Kids Network, a children's programming block and from 1984*
20 *through 1990 served as the Chief Executive Officer of Marvel Productions, a*
21 *television and film studio subsidiary of Marvel Entertainment Group. Ms. Loesch*
22 *obtained her Bachelor of Science from the University of Southern Mississippi. Ms.*
23 *Loesch was chosen to be a director based on her 40 years of experience at the helm*
24 *of major children and family programming and consumer product channels.*

25 54. Upon information and belief, defendant Loesch is a citizen of California.

26 **Defendant Segall**

27 55. Defendant Segall has served as a director of the Company since December 2013
28 where she serves as the Chair of the Nominating Committee. Pursuant to the 2020 Proxy
Statement, as of March 30, 2020, defendant Segall beneficially owned 13,335 shares of the

1 Company's common stock. Per the closing price of the Company's common stock of \$0.28 on
2 March 30, 2020, defendant Segall owned approximately \$3,734 worth of Genius stock.

3 56. For the fiscal year ended December 31, 2019, in exchange for her services as a
4 member of Genius's Board, defendant Segall received \$17,500 in compensation from the
5 Company. Defendant Segall's compensation consisted entirely of fees earned or paid in cash.

6 57. The Company's 2020 Proxy Statement stated the following regarding defendant
7 Segall:
8

9 *Lynne Segall, 67, has been a Director of the Company since December 2013. Ms.*
10 *Segall has served as the Senior Vice President and Publisher of The Hollywood*
11 *Reporter since June 2011. From 2010 to 2011, Ms. Segall was the Senior Vice*
12 *President of Deadline Hollywood. From June 2006 to May 2010, Ms. Segall*
13 *served as the Vice President of Entertainment, Fashion & Luxury advertising at*
14 *the Los Angeles Times. In 2005, Ms. Segall received the Women of*
15 *Achievement Award from The Hollywood Chamber of Commerce and the*
16 *Women in Excellence Award from the Century City Chamber of Commerce. In*
17 *2006, Ms. Segall was recognized by the National Association of Women with its*
18 *Excellence in Media Award. Ms. Segall was chosen to be a director based on her*
19 *expertise in the entertainment industry.*

20 58. Upon information and belief, defendant Segall is a citizen of California.

21 **Defendant Thomopoulos**

22 59. Defendant Thomopoulos has served as a director of the Company since December
23 2013 where he serves as the Chair of the Compensation Committee and as a member of the Audit
24 Committee. Pursuant to the 2020 Proxy Statement, as of March 30, 2020, defendant Thomopoulos
25 beneficially owned 13,450 shares of the Company's common stock. Per the closing price of the
26 Company's common stock of \$0.28 on March 30, 2020, defendant Thomopoulos owned
27 approximately \$3,766 worth of Genius stock.

28 60. For the fiscal year ended December 31, 2019, in exchange for his services as a
member of Genius's Board, defendant Thomopoulos received \$17,500 in compensation from the

1 Company. Defendant Thomopoulos compensation consisted entirely of fees earned or paid in
2 cash.

3 61. The Company's 2020 Proxy Statement stated the following regarding defendant
4 Thomopoulos:

5 *Anthony Thomopoulos, 82, has been a Director of the Company since February*
6 *2014. Mr. Thomopoulos served as the Chairman of United Artist Pictures from*
7 *1986 to 1989 and formed Thomopoulos Pictures, an independent production*
8 *company of both motion pictures and television programs in 1989 and has served*
9 *as its Chief Executive Officer since 1989. From 1991 to 1995, Mr. Thomopoulos*
10 *was the President of Amblin Television, a division of Amblin Entertainment. Mr.*
11 *Thomopoulos served as the President of International Family Entertainment, Inc.*
12 *from 1995 to 1997. From June 2001 to January 2004, Mr. Thomopoulos served as*
13 *the Chairman and Chief Executive Officer of Media Arts Group, a NYSE listed*
14 *company. Mr. Thomopoulos served as a state commissioner of the California*
15 *Service Corps. under Governor Schwarzenegger from 2005 to 2008. Mr.*
16 *Thomopoulos is also a founding partner of Morning Light Productions. Since he*
17 *founded it in 2008, Mr. Thomopoulos has operated Thomopoulos Productions and*
18 *has served as a consultant to BKSems, USA, a digital signage company. Mr.*
19 *Thomopoulos is an advisor and a member of the National Hellenic Society and*
20 *holds a degree in Foreign Service from Georgetown University and sat on its Board*
21 *of Directors from 1978 to 1988. Mr. Thomopoulos was chosen as a director of the*
22 *Company based on his entertainment industry experience.*

23 62. Upon information and belief, defendant Thomopoulos is a citizen of California.

24 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

25 63. By reason of their positions as officers and/or directors of the Company and
26 because of their ability to control the corporate affairs and business of the Company, the Individual
27 Defendants owed the Company and its stockholders fiduciary obligations of good faith, trust,
28 loyalty, and due care, and were and are required to use their best efforts to control and manage the
Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are
required to act in furtherance of the best interests of the Company and its stockholders so as to
benefit all stockholders equally and not in furtherance of their personal interest or benefit. Each
director and officer of the Company owes to the Company and its stockholders the fiduciary duty

1 to exercise good faith and diligence in the administration of the affairs of the Company and in the
2 use and preservation of its property and assets, and the highest obligations of fair dealing.

3 64. The Individual Defendants, because of their positions of control and authority as
4 directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise
5 control over the wrongful acts complained of herein.

6 65. In addition, as officers and/or directors of a publicly held company, the Individual
7 Defendants have a duty to promptly disseminate accurate and truthful information with regard to
8 the Company's operations, performance, management, projections, and forecasts so that the
9 market price of the Company's stock will be based on truthful and accurate information.

10 66. To discharge their duties, the officers and directors of Genius were required to
11 exercise reasonable and prudent supervision over the management, policies, practices, and controls
12 of the Company. By virtue of such duties, the officers and directors of Genius were required to,
13 among other things:

- 14 a. ensure that the Company complied with its legal obligations and
15 requirements, including acting only within the scope of its legal authority
16 and disseminating truthful and accurate statements to the SEC and the
17 investing public;
18 b. conduct the affairs of the Company in a lawful, efficient, business-like
19 manner so as to make it possible to provide the highest quality
20 performance of its business, to avoid wasting the Company's assets, and
21 to maximize the value of the Company's stock;
22 c. properly and accurately guide investors and analysts as to the true
23 financial condition of the Company at any given time, including making
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1 accurate statements about the Company's financial results and prospects,
2 and ensuring that the Company maintained an adequate system of
3 financial controls such that the Company's financial reporting would be
4 true and accurate at all times;

- 5 d. remain informed as to how the Company conducted its operations, and,
6 upon receipt of notice or information of imprudent or unsound conditions
7 or practices, make reasonable inquiry in connection therewith, and take
8 steps to correct such conditions or practices and make such disclosures as
9 necessary to comply with federal and state securities laws; and
10
11 e. ensure that the Company was operated in a diligent, honest, and prudent
12 manner in compliance with all applicable federal, state, and local laws,
13 rules, and regulations.
14

15 67. Each of the Individual Defendants, as an executive officer and/or director, owed
16 to the Company and to its stockholders the fiduciary duties of loyalty, good faith, and candor in
17 the management and administration of the affairs of the Company, as well as in the use and
18 preservation of its property and assets. The conduct of the Individual Defendants complained of
19 herein involves a knowing and culpable violation of their obligations as directors and officers of
20 the Company, the absence of good faith on their part, and a reckless disregard for their duties to
21 the Company and its stockholders that the Individual Defendants were aware or should have been
22 aware posed a risk of serious injury to the Company.
23

24
25 68. According to the Company's Corporate Governance Guidelines, the Board
26 members are required to "to perform his or her duties in good faith, in a manner he or she
27 reasonably believes to be in the best interests of the Company and its stockholders, and with such
28

1 care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use
2 under similar circumstances.”

3 69. The Company also maintains a Code of Business Conduct and Ethics and
4 Whistleblower Policy (the “Code of Conduct”). The Code of Conduct sets forth legal and ethical
5 standards of conduct for directors, officers, employees, and consultants of Genius and its
6 subsidiaries.
7

8 70. According to the Code of Conduct, the employees and directors of Genius are
9 responsible for helping Genius maintain its good reputation and the trust and confidence of its
10 stockholders, its employees, the public, and those with whom Genius does business.

11 71. Pursuant to the Code of Conduct:
12

13 **C. Accurate Records and Reporting**

14 Under law, the company is required to keep books, records and accounts
15 that accurately and fairly reflect all transactions, dispositions of assets and other
16 events that are the subject of specific regulatory record keeping requirements,
17 including generally accepted accounting principles and other applicable rules,
18 regulations and criteria for preparing financial statements and for preparing
19 periodic reports filed with the Securities and Exchange Commission. All company
20 reports, accounting records, sales reports, expense accounts, invoices, purchase
21 orders, and other documents must accurately and clearly represent the relevant facts
22 and the true nature of transactions. Reports and other documents should state all
23 material facts of a transaction and not omit any information that would be relevant
24 in interpreting such report or document. Under no circumstance may there be any
25 unrecorded liability or fund of the company, regardless of the purposes for which
26 the liability or fund may have been intended, or any improper or inaccurate entry
27 knowingly made on the books or records of the company. No payment on behalf
28 of the company may be approved or made with the intention, understanding or
awareness that any part of the payment is to be used for any purpose other than that
described by the documentation supporting the payment. In addition, intentional
accounting misclassifications (e.g., expense versus capital) and improper
acceleration or deferral of expenses or revenues are unacceptable reporting
practices that are expressly prohibited.

* * *

Responsibility for compliance with these internal controls and disclosure controls

1 and procedures rests not solely with the company's accounting personnel, but with
2 all associates involved in approving transactions, supplying documentation for
3 transactions, and recording, processing, summarizing and reporting of transactions
4 and other information required by periodic reports filed with the Securities and
5 Exchange Commission. Because the integrity of the company's external reports to
6 shareholders and the Securities and Exchange Commission depends on the integrity
7 of the company's internal reports and record-keeping, all associates must adhere to
8 the highest standards of care with respect to our internal records and reporting. The
9 company is committed to full, fair, accurate, timely, and understandable disclosure
10 in the periodic reports required to be filed by it with the Securities and Exchange
11 Commission, and it expects each associate to work diligently towards that goal.

12 72. In addition, the Company's Audit Committee is specifically tasked with the
13 Board's oversight responsibilities. The conduct of the Audit Committee is governed by the Audit
14 Committee Charter (the "Charter").

15 73. Pursuant to the Charter:

16 **Statement of Purpose**

17 The Committee shall provide assistance to the Board of Directors in its oversight,
18 independence and qualification of the Corporation's independent registered
19 auditors and in fulfilling their responsibility to the shareholders, potential
20 shareholders and investment community relating to corporate accounting, reporting
21 practices of the Corporation, the quality and integrity of the financial reports of the
22 Corporation and the Corporation's compliance with legal and regulatory
23 requirements. In so doing, it is the responsibility of the Committee to maintain free
24 and open means of communication between the directors, the independent auditors
25 and the financial management to the Corporation.

26 **Responsibilities**

27 In carrying out its responsibilities, the Committee believes its policies and
28 procedures should remain flexible, in order to best react to changing conditions and
to ensure to the directors and shareholders that the corporate accounting and
reporting practices of the Corporation are in accordance with all requirements and
are of the highest quality.

In carrying out these responsibilities, the Committee will:

- Serve as an independent and objective party to monitor the Corporation's financial reporting process and internal control system and complaints or concerns relating thereto.

1 • To select and retain an independent registered public accounting firm to act as the
2 Corporation's independent auditors for the purpose of auditing the Corporation's
3 annual financial statements, books, records, accounts and internal controls over
4 financial reporting, subject to ratification by the Company's stockholders of the
5 selection of the independent auditors.

6 • To recommend, for shareholder approval, the independent auditor to examine the
7 Corporation's accounts, controls and financial statements. The Committee shall
8 have the sole authority and responsibility to select, evaluate and if necessary,
9 replace the independent auditor. The Committee shall have the sole authority to
10 approve all audit engagement fees and terms and the Committee, or a member of
11 the Committee, must pre-approve any nonaudit service provided to the Corporation
12 by the Corporation's independent auditor.

13 • Meet with the independent auditors and financial management of the Corporation
14 to review the scope of the proposed audit for the current year and the audit
15 procedures to be utilized, and at the conclusion thereof review such audit, including
16 any comments or recommendations of the independent auditors.

17 • Obtain and review at least annually, a formal written report from the independent
18 auditor setting forth its internal quality-control procedures; material issues raised
19 in the prior five years by its internal quality-control reviews and their resolution.
20 The Committee will review at least annually all relationships between the
21 independent auditor and the Corporation.

22 • Ensure that the lead audit partner assigned by the independent auditor as well as
23 the audit partner responsible for reviewing the audit of the corporation's financial
24 statements shall be changed at least every five years.

25 • Review and appraise the audit efforts of independent auditors of the Corporation
26 and, where appropriate, recommend the replacement of the independent
27 accountants.

28 • Consider and approve, if appropriate, major changes to the Corporation's
accounting principles and practices as suggested by the independent auditors or
management.

• Establish regular and separate systems of reporting to the Committee by
management and the independent auditors regarding any significant judgements
made in management's preparation of the financial statements and the view of each
as to appropriateness of such judgments and additional items as required under the
Sarbanes-Oxley Act including critical accounting policies.

• Review with the independent auditors and financial accounting personnel, the
adequacy and effectiveness of the accounting and financial controls of the
Corporation, and elicit any recommendations for the improvement of such internal

1 control procedures or particular areas where new or more detailed controls or
2 procedures are desirable. Particular emphasis should be given to the adequacy of
3 such internal controls to assess and manage financial risk exposure and to expose
4 any payments, transactions or procedures that might be deemed illegal or otherwise
5 improper.

6 • Review and approve the internal corporate audit staff functions, including (i)
7 purpose, authority and organizational reporting lines; (ii) annual audit plan, budget
8 and staffing; (iii) concurrence in the appointment, compensation and rotation of the
9 internal audit management function; and (iv) results of internal audits.

10 • Review the financial statements contained in the annual report and quarterly report
11 to shareholders with management and the independent auditors to determine that
12 the independent auditors are satisfied with the disclosure and content of the
13 financial statements to be presented to the shareholders. Any changes in accounting
14 principles should be reviewed.

15 • Prepare and publish an annual Committee report in the proxy statement of the
16 Corporation.

17 • Review with management of the Corporation any financial information, earnings
18 press releases and earnings guidance filed with the Securities and Exchange
19 Commission or disseminated to the public, including any certification, report,
20 opinion or review rendered by the independent auditors.

21 • Provide sufficient opportunity for the independent auditors to meet with the
22 members of the Committee without members of management present. Among the
23 items to be discussed in these meetings are the independent auditors' evaluation of
24 the Corporation's financial, accounting and auditing personnel, and the cooperation
25 that the independent auditors received during the course of the audit.

26 • Establish procedures for receiving and treating complaints received by the
27 Corporation regarding accounting, internal accounting controls and auditing
28 matters, and the confidential anonymous submission by employees of concerns
regarding questionable accounting or auditing matters.

• Submit the minutes of all meetings of the Committee to, or discuss the matters
discussed at each Committee meeting with, the board of directors.

• Investigate any matter brought to its attention within the scope of its duties, with
the power to retain outside advisors for this purpose if, in its judgment, that is
appropriate.

• Review, approve and oversee any transaction between the Corporation and any
"related person," as defined by the Securities and Exchange Commission in its
rules, on an ongoing basis and to develop policies and procedures for the

1 Committee's approval of related party transactions.

2 • Retain and obtain, in its sole discretion, the advice and assistance of independent
3 outside counsel and such other advisors as deemed necessary to fulfill the
4 Committee's duties and responsibilities, and to set the compensation of, oversee the
5 work of and evaluate the funding required to cover any outside counsel and other
6 advisors.

7 74. In violation of the Charter, and their general duties as members of the Audit
8 Committee, defendants Hallren, Klein, and Thomopoulos (the "Audit Committee Defendants"),
9 conducted little, if any, oversight of the Company's internal controls or the Company's compliance
10 with legal and regulatory requirements, resulting in materially false and misleading statements
11 regarding the Company's business, operational, and compliance policies, and consciously
12 disregarded their duties to monitor such controls over reporting. The Audit Committee
13 Defendants' complete failure to perform their duties in good faith resulted in false
14 misrepresentations to the SEC, the investing public, and the Company's stockholders.

15 75. Each of the Individual Defendants further owed to Genius and its stockholders the
16 duty of loyalty, which requires that each favor Genius's interest and that of its stockholders over
17 their own while conducting the affairs of the Company and refrain from using their position,
18 influence, or knowledge of the affairs of the Company to gain a personal advantage.

19
20 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

21 76. In committing the wrongful acts alleged herein, the Individual Defendants have
22 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with
23 and conspired with one another in furtherance of their wrongdoing. The Individual Defendants
24 caused the Company to conceal the true facts as alleged herein. The Individual Defendants further
25 aided and abetted and/or assisted each other in breaching their respective duties.

26
27 77. The purpose and effect of the conspiracy, common enterprise, and/or common
28 course of conduct was, among other things, to: (i) facilitate and disguise the Individual

1 Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, waste
2 of corporate assets, and violations of the Exchange Act; (ii) conceal adverse information
3 concerning the Company's operations, financial condition, legal compliance, future business
4 prospects and internal controls; and (iii) artificially inflate the Company's stock price.

5 78. The Individual Defendants accomplished their conspiracy, common enterprise,
6 and/or common course of conduct by causing the Company purposefully, recklessly, or
7 negligently to conceal material facts, fail to correct such misrepresentations, and violate applicable
8 laws. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants
9 collectively and individually took the actions set forth herein. Because the actions described
10 herein occurred under the authority of the Board, each of the Individual Defendants who are
11 directors of Genius was a direct, necessary, and substantial participant in the conspiracy, common
12 enterprise, and/or common course of conduct complained of herein.
13
14

15 79. Each of the Individual Defendants aided and abetted and rendered substantial
16 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
17 commission of the wrongdoing complained of herein, each of the Individual Defendants acted with
18 actual or constructive knowledge of the primary wrongdoing, either took direct part in, or
19 substantially assisted the accomplishment of that wrongdoing, and was or should have been aware
20 of his or her overall contribution to and furtherance of the wrongdoing.
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SUBSTANTIVE ALLEGATIONS

Background

80. Genius is incorporated in Nevada and is headquartered in California. Genius's business focuses on content and brand management along with the creation and licensing of multimedia content for toddlers to tweens.

81. Genius's products are distributed across numerous platforms, including Comcast's Xfinity on Demand, AppleTV, Roku, Amazon Fire, YouTube, Amazon Prime, Cox, Dish, Sling, Zumo, and Connected TV. The Company's entertainment property portfolio includes products such as Rainbow Ranger for Nick Jr., Llama Llama for Netflix, Baby Genius, Thomas Edison's Secret Lab, Warren Buffet's Secret Millionaire's Club, and the upcoming Stan Lee's Superhero Kindergarten.

82. Originally founded in 2006, Genius operated as a private company until it went public in 2009. Upon reincorporation in Nevada in 2011, the Company, which was formerly known as Pacific Entertainment Corporation changed its corporate name to Genius. In 2013, the Company acquired through a merger the business and operation of multimedia and entertainment company A Squared Entertainment LLC ("A Squared").

83. Since going public in 2009, Genius's stock has traded at relatively low prices, becoming what is known as a "penny stock" by mid-July 2019, when Genius's stock traded for less than \$1.00 per share. The Company's shares remained below \$1.00 from July 23, 2019 through the end of the year. Accordingly, on September 4, 2019, Genius received a notification letter from the NASDAQ informing the Company that it had 180 calendar days, or until March 2, 2020, to regain compliance.

84. Given that NASDAQ's continued listing requirements mandate that a company's share price remain equal to or greater than \$1.00 per share, during this period, Genius was at risk

1 of being delisted from the NASDAQ. On March 5, 2020, the Company disclosed in a Form 8-K
2 filed with the SEC that “[i]f the Company does not meet the minimum bid requirement during the
3 additional 180-day grace period, Nasdaq will provide written notification to the Company that its
4 common stock will be subject to delisting.”

5 85. Further, the 2019 10-K stated that Genius incurred an operating loss each fiscal
6 quarter since its inception. The 2019 10-K also stated that while the Company’s revenue had
7 increased from \$999,452 in 2018 to \$5,907,899 in 2019, the Company incurred a net loss of nearly
8 \$2.48 million more in 2019 than it did in 2018 due to skyrocketing costs and expenses.
9

10 86. In relevant part, the Company’s 2019 10-K states the following:

11 We will need to generate additional revenue and/or reduce costs to achieve
12 profitability. We are beginning to generate revenues derived from our existing
13 properties, properties in production, and new brands being introduced into the
14 marketplace. However, the ability to sustain these revenues and generate
15 significant additional revenues or achieve profitability will depend upon
16 numerous factors some of which are outside of our control.

17 ***

18 **We will need additional financing to continue our operations. If we are unable
19 to obtain additional financing on acceptable terms, we will need to curtail or
20 cease our development plans and operations.**

21 As of December 31, 2019, we had approximately \$305,000 of available cash, cash
22 equivalents, and restricted cash. Following various financings during the first
23 quarter of 2020, as of March 28, 2020, we had approximately \$2.8 million of cash
24 and cash equivalents. Additional funds may be required to fund operations and
25 repay our outstanding debt which could be raised through the issuance of equity
26 securities and/or debt financing. There is no assurance that any type of financing
27 on terms acceptable to us will be available or will otherwise occur. Debt financing
28 must be repaid regardless of whether we generate revenues or cash flows from
operations and may be secured by substantially all of our assets. Any equity
financing or debt financing that requires the issuance of warrants or other equity
securities to the lender would cause the percentage ownership by our current
stockholders to be diluted, which dilution may be substantial. Also, any additional
equity securities issued may have rights, preferences or privileges senior to those
of existing stockholders. If we obtain stockholder approval, any equity financing
at a price below the then current conversion price of our March 2020 Secured
Convertible Notes or the exercise price of the March 2020 Warrants will result in

1 an adjustment to the conversion price or exercise price applicable to such securities,
 2 resulting in the potential issuance of additional shares of our common stock upon
 3 the conversion or exercise of such securities, which would further dilute our other
 4 stockholders.

If we are not able to obtain sufficient capital, we may then be forced to limit the scope of our operations.

5 We expect that as our business continues to evolve, we will need additional working
 6 capital. If adequate additional debt and/or equity financing is not available on
 7 reasonable terms or at all, we may not be able to continue to expand our business,
 8 and we will have to modify our business plans accordingly. These factors could
 9 have a material adverse effect on our future operating results and our financial
 10 condition.

11 If we reach a point where we are unable to raise needed additional funds to continue
 12 as a going concern, we could be forced to cease our activities and dissolve our
 13 company. In such an event, we will need to satisfy various creditors and other
 14 claimants, severance, lease termination and other dissolution-related obligations.

15 87. As outlined in the Company's quarterly report on Form 10-Q for the fiscal quarter
 16 ended March 31, 2020 (the "1Q2020 10-Q"), Genius maintained low liquidity as its liabilities far
 17 outweighed its cash assets, resulting in negative working capital.

18 88. Around this time and unbeknownst to shareholders, Genius began to work with a
 19 third-party stock promoter, PennyStocks, to begin issuing favorable reports about the Company.
 20 According to its website, PennyStocks only publishes favorable information because it is
 21 "compensated to only publish favorable information." It also states that not all information is sent
 22 to investors at the same time, and that "[i]f the trading volume and price of a Profile Issuer's
 23 securities increases after the Information is provided to an earlier group of investors, then
 24 subsequent investors will pay inflated prices for any securities of the Profiled Issuers that they
 25 purchase." The website also explained that "[t]his will likely result in the Profiled Issuers having
 26 trading losses."

The Company Conducts a Series of Stock Offerings as the Individual Defendants Issue False and Misleading Statements to the Public

89. Taking into account the Company's lack of working capital, the danger of losing the Company's NASDAQ listing, and the onset of rising costs and expenses, as detailed in the Company's 1Q2020 10-Q, the Individual Defendants endeavored to conduct a series of offerings of Company stock and convertible notes during the Relevant Period in order to secure the funds the Company needed. At the same time, the Individual Defendants made numerous statements to the investing public that grossly exaggerated the Company's business outlook and growth prospects, in order to artificially increase the price of the Company's stock.

90. The Company entered into an agreement to raise \$11 million on March 17, 2020 through the issuance of Senior Secured Convertible Notes (the "Notes").

91. The Individual Defendants caused the Company to file a Form 8-K on March 23, 2020 (the "March 23 Form 8-K") and one day later, on March 24, 2020, a prospectus supplement on Form 424B5 (the "March 24 Form 424B5") (collectively, the "March 24 Offering Documents") in connection with a direct offering of 4,000,000 shares of the Company's common stock to long-standing investors at \$0.25 per share, approximately \$0.06 below its market value at the time of the offering. The total gross proceeds from the offering equaled approximately \$1 million. The March 24 Offering Documents explained that the Company intended to use the net proceeds for its "general corporate purposes."

92. The Individual Defendants caused the Company to file a prospectus supplement on May 7, 2020, on Form 424B5 (the "May 7 Form 424B5") and a current report on Form 8-K (the "May 7 Form 8-K") (collectively, the "May 7 Offering Documents") with the SEC in connection with an additional direct offering of 8,000,000 shares of the Company's common stock to long-standing investors at \$0.35 per shares, approximately \$0.13 below its market value at the

1 time of the offering. The total gross proceeds from the offering equaled approximately \$2.8
 2 million. The May 7 Offering Documents explained that the Company intended to use the net
 3 proceeds for “working capital and general corporate purposes including to fund production of
 4 additional episodes of its series, *Rainbow Rangers*, and to grow its newly-announced digital
 5 network for children and families, *Kartoon Channel!*.”

6
 7 93. The Individual Defendants also caused the Company to publish a press release on
 8 May 7, 2020 titled “Genius Brands International Announces \$2.8 Million Registered Direct
 9 Offering” (the “May 7 Press Release”) announcing that it had entered into a securities purchase
 10 agreement with “certain long-standing investors.” The May 7 Press Release reiterated, in pertinent
 11 part, that the offering was for the purchase and sale of 8 million shares of its common stock at a
 12 purchase price of \$0.35 per share in a registered direct offering, resulting in total gross \$2.8 million.
 13

14 94. In relevant part, the May 7 Press Release continues to state:

15 The net proceeds of the financing will be used for working capital and general
 16 corporate purposes. In addition, Genius Brands intends to use the proceeds to fund
 17 production of additional episodes of its series, *Rainbow Rangers*, which will debut
 18 on Nick Jr. in conjunction with the launch of the toy line from Mattel, Inc. at
 19 Walmart stores Q3 2020. The Company will also apply the financing to grow its
 20 newly- announced digital network for children and families, *Kartoon Channel!*,
 21 which will launch in June 2020 with availability in over 100M U.S. television
 22 households.

23 95. On May 11, 2020, only days after the May 7 Offering Documents, the Individual
 24 Defendants caused the Company to file a prospectus supplement on Form 424B5 with the SEC
 25 (the “May 11 Form 424B5”) in connection with a direct offering of 12,000,000 shares of the
 26 Company’s common stock to long-standing investors of \$0.45 per share, approximately \$0.38
 27 below its market value at the time of the offering. The total gross proceeds from the offering
 28 equaled approximately \$5.4 million. The May 11 Form 424B5 explained that the Company
 intended to use the net proceeds for its “operations and for other general corporate purposes,

1 including, but not limited to, the development, production, and distribution of animated content
 2 and associated licensed merchandise, general working capital and possible future acquisitions.”

3 96. On March 13, 2020, the Individual Defendants caused the Company to publish a
 4 shareholder letter (the “May 13 Shareholder Letter”) in which defendant Heyward announced the
 5 following, in relevant part:
 6

7 It has been a busy week and an exciting week for Genius Brands, and with all of
 8 this news, there was a surge of activity buying Genius Brands shares, and the stock
 9 price rose as a result. Based on that, we did a cash raise to provide adequate
 10 ‘*gunpowder*’ to fund new episodes of RAINBOW RANGERS on air, to coincide
 11 when toys go on shelf at Walmart in August, as well as have funds to ensure first-
 class build-out of *Kartoon Channel!* when we go live on June 15, including not
 only content acquisitions and marketing, but on-air branding--bumpers, graphics,
 and musical stings, etc.

12 97. The Individual Defendants caused the Company to its 1Q2020 10-Q, which set
 13 forth the Company’s financial troubles for the first fiscal quarter ended March 31, 2020, stating,
 14 in pertinent part, that, “Licensing and Royalty revenue decreased \$146,821, or 42%” and
 15 “Television & Home Entertainment revenue decreased \$797,890, or 94%, primarily due to the
 16 revenue generated from the delivery of *Rainbow Rangers* to the Viacom Media Network in January
 17 2019 without comparable revenue in 2020.”
 18

19 98. The 1Q2020 10-Q also stated that, as of March 31, 2020, the Company had
 20 \$2,760,048 in cash and cash equivalents and \$19,290,901 in liabilities, resulting in negative
 21 working capital of \$9,198,824, compared to a negative working capital of only \$3,650,136 as of
 22 December 31, 2019.
 23

24 99. Also on May 18, 2020, the Company filed a current report on Form 8-K (the “May
 25 18 Form 8-K”) and one day later, May 19, 2020, filed a prospectus supplement on Form 424B5
 26 (the “May 19 Form 424B5”) (collectively, the “May 19 Offering Documents”) with the SEC in
 27 connection with a direct offering of 7,500,000 shares of the Company’s common stock to long-
 28

1 standing investors at \$1.20 per share, approximately \$0.30 below its market value at the time of
 2 the offering. The total gross proceeds from the offering equaled approximately \$9 million. The
 3 May 19 Offering Documents explained that that Company intended to use the net proceeds to
 4 “grow its newly-announced digital network for children, Kartoon Channel!, to fund production of
 5 additional episodes of its series Rainbow Rangers, and for the repayment of certain outstanding
 6 debt, and for working capital.”

7
 8 100. On May 28, 2020, the Individual Defendants caused the Company to file a current
 9 report on Form 8-K (the “May 28 Form 8-K”) and the next day, May 29, 2020, filed a prospectus
 10 supplement on Form 424B5 (the “May 29 Form 424B5”) (collectively, the “May 29 Offering
 11 Documents”) with the SEC in connection with another direct offering of 20,000 shares of the
 12 Company’s common stock to long-standing investors of \$1.50 per share, approximately \$0.33
 13 below its market value at the time of the offering. The total gross proceeds from the offering
 14 equaled approximately \$30 million. The May 29 Offering Documents stated that the Company
 15 intended to use the net proceeds to “repay certain outstanding debt and for working capital and
 16 general corporate purposes, including to fund production of additional episodes of our series,
 17 Rainbow Rangers, and to grow our newly-announced digital network for children and families,
 18 Kartoon Channel!.”

19
 20
 21 101. The Individual Defendants caused the Company to issue a statement on June 8,
 22 2020 via a press release titled “Genius Brands International Responds to Misleading Short Seller
 23 Criticisms” (the “June 8 Press Release”). The June 8 Press Release, where defendant Heyward
 24 responded to short seller criticisms contained in the Hindenburg Report, stated, in relevant part:

25
 26 On a personal note, *I have not sold a single share, and in fact, have materially*
 27 *increased my holdings in the Company in the last two years.* We take the views of
 28 all our investors seriously, and we and our board are committed to maintaining the
 highest standards of corporate governance and transparency.

1 102. On June 11, 2021, only a few days before the launch of Genius's Kartoon
2 Channel!, the Individual Defendants caused the Company to file a prospectus on Form 424B5 (the
3 "June 11 Form 424B5") registering over 60 million shares of its common stock for resale by a
4 group of "selling shareholders" at a listed price of \$4.51 per share.

5 103. On the same day, June 11, 2020, the Motley Fool published an article titled "3
6 Things Genius Brands Stock Bulls Need to Happen Soon"² where it laid out what investors would
7 be watching for to justify the Company's inflated valuation. The article stated the following, in
8 relevant part:
9

10 **2. Genius Brands' selling shareholders need to cancel their stock offering.**

11 As often happens when a stock price soars, early investors in Genius Brands are
12 looking for the exits. **If Genius really wants to avoid the appearance of a pump-
13 and-dump scheme, then it should urge those selling shareholders to reconsider.**

14 Regardless of the true motivation behind the stock offering, the optics look terrible.
15 During May, Genius Brands sold stock to "certain long standing investors" at
16 prices ranging from \$0.35 to \$1.50 per share, raising gross proceeds of about
17 \$47.25 million. That followed the issuance of secured convertible notes and
18 warrants in March to certain accredited investors, including Heyward. The
warrants gave investors the right to buy stock at \$0.21 per share, and now Genius
Brands is registering the shares to allow those investors to sell the stock acquired
through the warrants at much higher current prices.

19 To be fair, Heyward isn't listed as a selling shareholder, and the prospectus for
20 the sale doesn't list the Genius Brands CEO as being affiliated with any of the
21 limited partnerships and other investment groups that are selling shares.
22 Nevertheless, with expectations of selling more than 60 million shares, the desire
to cash out quick is evident -- and actions speak louder than the words of those
trying to reassure current shareholders not to draw inferences from the move.

23 104. On June 19, 2020, only 11 days after defendant Heyward had assured investors
24 that he had not "sold a single share," Heyward sold 460,574 shares at \$2.94 per share for gross
25 proceeds of approximately \$1.3 million.
26

27 _____
28 ² Available at <https://www.fool.com/investing/2020/06/1/3-things-genius-brands-stock-bulls-need-to-happen.aspx> (last visited August 28, 2020).

105. The Company issued a press release on June 23, 2020, announcing that it had come to an agreement with all of its existing senior secured convertible noteholders to have the noteholders pre-pay their Notes for an aggregate of \$4 million, three months early and then have the noteholders convert all of their \$13.75 million of debt to equity.

106. The Individual Defendants were aware that their statements were false, misleading, exaggerated, and overly optimistic. However, the Individual Defendants continued to knowingly circulate false statements and omissions of material fact regarding the Company's products, assets, and growth potential to artificially inflate the price so as to profit and avoid Genius's impending burial in insurmountable debt. Further, the Individual Defendants have failed to correct or clarify their false and misleading statements and omissions of material fact.

Materially False and Misleading Statements

107. On March 17, 2020, the Individual Defendants caused the Company to issue a press release titled "Nickelodeon Expands Daily Broadcasts of Genius Brand International's Hit Preschool Series, Rainbow Rangers" (the "March 17 Press Release") announcing that Nickelodeon had raised the broadcasts of the Company's preschool series, Rainbow Rangers, to 26 airings per week. The March 17 Press Release states the following, in relevant part:

Nick Jr. now airs *Rainbow Rangers* Monday – Friday, four airings per day, and six airings on the weekends. The animated action- adventure series premiered on Nick Jr. in November 2018 with five airings per week and has consistently achieved high ratings with its target demo of Girls 2 – 5-years-old. The additional airings of *Rainbow Rangers*, which represents a five-fold increase (400+%), are complimented by content available via video on demand platforms and the brand's robust YouTube channel where viewers have consumed over 22.5 million minutes of *Rainbow Rangers*' content in the last year.

(Emphasis added.)

108. On March 20, 2020, the Individual Defendants caused the Company to publish a press release (the "March 20 Press Release") stating, in relevant part, that "*Cartoons endure. We*

1 announced Tuesday that *Rainbow Rangers* is now up to 26 broadcasts a week on Nick Jr.!!!” On
 2 a conference call on the same day, March 20, 2020, defendant Heyward reiterated the above
 3 referenced statements.

4 109. On March 23, 2020, the Individual Defendants caused the Company to publish a
 5 press release (the “March 23 Press Release”) stating, in relevant part, that “[Rainbow Rangers]
 6 premiered in the U.S. in November 2018 on Nickelodeon’s **Nick Jr.** and has since achieved a
 7 400+% increase in airtime with *Rainbow Rangers* now airing 26x each week.”

9 110. On March 24, 2020, in connection with the Company’s direct offering of shares
 10 of its common stock, the Individual Defendants caused the Company to file the March 24 Offering
 11 Documents with the SEC. The March 24 Offering Documents stated, in relevant part:

12 *Content in Production*
 13

14 *Rainbow Rangers Season 2:* From Shane Morris, the writer of Frozen, and Rob
 15 Minkoff, the director of The Lion King, Rainbow Rangers is an animated series
 16 about the adventures of seven magical girls from Kaleidoscopia, a fantastic land on
 17 the other side of the rainbow. The Rangers serve as Earth’s guardians and first-
 18 responders. When there’s trouble for the people or animals of the Earth, the
 19 Rangers ride a rainbow across the sky to save the day. We have partnered with
 20 Mattel Inc.’s Fisher Price Toys as the master toy partner for the series, and
 21 Viacom’s Nick Jr. has licensed the series for broadcast in the US. Numerous
 22 international broadcast agreements have been signed and several more are currently
 23 being negotiated in various territories. Viacom has ordered a second season of the
 24 series consisting of 26 halfhour episodes that are currently in production, the first
 25 of which have been delivered.

26 ***

27 *Already Released Content*
 28

29 *Rainbow Rangers:* The series premiered on Nick Jr. in November 2018 and we
 30 completed 26 half hour episodes in February 2019. The series was created by Shane
 31 Morris, the co-writer of Frozen, and Rob Minkoff, the director of The Lion King,
 32 Rainbow Rangers is an animated series about the adventures of seven magical girls
 33 from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers
 34 serve as Earth’s guardians and first-responders. When there’s trouble for the people
 35 or animals of the Earth, the Rangers ride a rainbow across the sky to save the day.

1 A global licensing program is in place and the first products will be introduced to
2 the market in second quarter of 2019.

3 111. The March 24 Offering Documents only provided a generic update of Rainbow
4 Rangers, the Company's flagship product, but failed to correct or clarify the statements regarding
5 increased broadcasting or the status of negotiations with Nickelodeon pertaining to the renewal of
6 the show for a third season, all of which were made in the March 17 Press Release.

7 112. On March 30, 2020, the Individual Defendants caused the Company to file its
8 2019 10-K. The 2019 10-K was signed by defendants Heyward, Denton, Davis, Hallren, Klein,
9 Loesch, Segall, and Thomopoulos, and contained Sarbanes-Oxley Act of 2002 ("SOX")
10 certifications signed by defendants Heyward and Denton attesting to the accuracy of the financial
11 statements contained therein, the disclosure of any material changes to the Company's internal
12 controls, and the disclosure of any fraud committed by the Company, its officers, or its directors.

13 113. Regarding the Company's Internal controls, the 2019 10-K stated the following:
14

15 Our management assessed the effectiveness of our internal control over financial
16 reporting as of December 31, 2019. In making this assessment, management used the
17 criteria set forth by the Committee of Sponsoring Organizations of the Treadway
18 Commission (COSO) in *Internal Control – Integrated Framework (2013 Framework)*.

19 **Based on this assessment, our management, with the participation of our Chief**
20 **Executive Officer (principal executive officer) and our Chief Financial Officer**
21 **(principal financial and accounting officer), has concluded that, as of**
22 **December 31, 2019, our internal control over financial reporting were**
23 **effective based on those criteria.**

24 **Evaluation of Disclosure Controls and Procedures**

25 We carried out an evaluation, under the supervision and with the participation of
26 our management, including our chief executive officer and chief financial officer,
27 of the effectiveness of the design and operation of our disclosure controls and
28 procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities
Exchange Act of 1934, as amended (the "Exchange Act"). Disclosure controls
and procedures include, without limitation, controls and procedures that are
designed to ensure that information required to be disclosed by an issuer in the
reports that it files or submits under the Exchange Act is accumulated and

communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Based upon our evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective for the year ended December 31, 2019 in ensuring that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the fourth quarter of our last fiscal year that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(Emphasis added in bold and not italics, except headings.)

114. On March 31, 2020, the Individual Defendants caused the Company to publish a press release (the "March 31 Press Release") stating, in relevant part, that Rainbow Rangers "airs on Nick Jr. in the U.S. Monday – Friday with four airings per day, and six airings on the weekends..."

115. On April 20, 2020, the Individual Defendants caused the Company to release a press release (the "April 20 Press Release") to shareholders in which Heyward stated that launching Stan Lee's Superhero Kindergarten on Amazon and Alibaba was "[p]lutionium in a bottle" and affirmed that Genius is "positioned to explode" in 2020. Defendant Heyward reiterated the above referenced statements on a conference call later that day (the "April 20 Conference Call").

116. On April 14, 2020, the Individual Defendants caused the Company to file its 2020 Proxy Statement with the SEC. The 2020 Proxy Statement was solicited by defendants Heyward, Davis, Hallren, Klein, Loesch, Segall, and Thomopoulos pursuant to Section 14(a) of the Exchange

1 Act, which contained material misstatements and omissions.³ The 2020 Proxy Statement stated,
 2 with respect to the Company's Code of Conduct, that, "[w]e have adopted a Corporate Code of
 3 Conduct and Ethics and Whistleblower Policy that applies to all of our officers, directors and
 4 employees." Despite assertions to the contrary, the 2020 Proxy Statement was false and
 5 misleading because the Code of Conduct was not followed, as evidenced by the multitude of false
 6 and misleading statements alleged herein, and the Individual Defendants' failures to report
 7 violation of the Code of Conduct.
 8

9 117. In addition, the 2020 Proxy Statement also called for shareholder approval of,
 10 among other things: (1) the approval, for purposes of complying with Nasdaq Listing Rule
 11 5635(d), of the issuance of shares of common stock upon conversion, exercise, exchange or
 12 otherwise pursuant to the terms of a securities purchase agreement dated March 11, 2020, and the
 13 convertible notes and warrants to purchase common stock and the warrants issued to the placement
 14 agent (the "Issuance Proposal 1"); (2) approval, for purposes of complying with Nasdaq Listing
 15 Rule 5635(c), the issuance of shares of common stock upon conversion, exercise, exchange or
 16 otherwise to defendant Heyward pursuant to the terms of a securities purchase agreement dated
 17 March 11, 2020, and the related convertible notes and warrants (the "Issuance Proposal 2"); and
 18 (3) approval of a proposed amendment to the Company's Articles of Incorporation to increase the
 19 authorized number of shares of Genius's common stock from 233,333,334 to 650,000,000 (the
 20 "Amendment Proposal").
 21
 22
 23
 24
 25

26 ³ Plaintiff's allegations with respect to the misleading statements in the 2020 Proxy Statement are
 27 based solely on negligence; they are not based on any allegation of reckless or knowing conduct
 28 by or on behalf of the Individual Defendants, and they do not allege, and do not sound in, fraud.
 Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to
 any allegation of fraud, scienter, or recklessness with regard to these allegations and related claims.

118. Also, the 2020 Proxy Statement was also misleading because it failed to disclose, *inter alia*, that: (1) Rainbow Rangers was airing on Nickelodeon only nine times per week, rather than 26 times as Genius had previously represented, and at unfavorable time slots; (2) Kartoon Channel! would be available to Amazon Prime members only as an add-on channel for an additional subscription fee; (3) Kartoon Channel! platform was not as robust of an offering as the Individual Defendants purported; (4) the commercial viability of the Company was overstated in light of the true accuracy of the Company's products and assets; and (5) the Company failed to maintain internal controls.

119. On May 7, 2020 and May 11, 2020, the Company filed the May 7 Offering Documents and May 11 Offering Documents, respectively, with the SEC in connection with the Company's direct offering of shares of its common stock. The May 7 Offering Documents and May 11 Offering Documents stated, in relevant part:

Content in Production

Rainbow Rangers Season 2: From Shane Morris, the writer of *Frozen*, and Rob Minkoff, the director of *The Lion King*, *Rainbow Rangers* is an animated series about the adventures of seven magical girls from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers serve as Earth's guardians and first-responders. When there's trouble for the people or animals of the Earth, the Rangers ride a rainbow across the sky to save the day. We have partnered with Mattel Inc.'s Fisher Price Toys as the master toy partner for the series, and Viacom's Nick Jr. has licensed the series for broadcast in the US. Numerous international broadcast agreements have been signed and several more are currently being negotiated in various territories. Viacom has ordered a second season of the series consisting of 26 half-hour episodes that are currently in production, the first of which have been delivered.

Already Released Content

Rainbow Rangers: The series premiered on Nick Jr. in November 2018 and we completed 26 half hour episodes in February 2019. The series was created by Shane Morris, the co-writer of *Frozen*, and Rob Minkoff, the director of *The Lion King*, *Rainbow Rangers* is an animated series about the adventures of seven magical girls

1 from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers
 2 serve as Earth's guardians and first-responders. When there's trouble for the people
 3 or animals of the Earth, the Rangers ride a rainbow across the sky to save the day.
 A global licensing program is in place and the first products will be introduced to
 the market in second quarter of 2019.

4 120. The May 7 Offering Documents and May 11 Offering Documents failed to correct
 5 or clarify statements made in the March 17 Press Release, providing only a generic update of
 6 Rainbow Rangers, the Company's flagship product. The incorrect or misleading statements
 7 regarding increased broadcasting or the status of negotiations with Nickelodeon pertaining to the
 8 renewal of Rainbow Rangers for a third season were not addressed.
 9

10 121. Also, on May 13, 2020, in a separate press release (the "May 13 Press Release"),
 11 defendant Heyward stated, in relevant part, that he is "pleased to report that Genius Brands is in a
 12 stronger position today than ever before in its history" and that the Company sees "robust and
 13 accelerated revenue growth coming forth" in the animated content arena.
 14

15 122. Genius publicized *Kartoon Channel!* in the Company's May 13 Shareholder Letter
 16 and stated, in relevant part:

17 *Kartoon Channel!* is what we like to call a 'Netflix for kids', except it is free.
 18 There is no subscription fee. It is fully ad-supported. It is a pure cartoon play, with
 19 no 'natural predators', and what one of our board members described as an
 "economic vaccine for COVID-19."

20 123. The May 13 Press Release, in relevant part, stated:

21 In addition, *Kartoon Channel!* has acquired a large (almost 4,000 episodes!) and
 22 carefully curated number of animated programs ranging from *Archie's Weird*
 23 *Mysteries* to *Minecraft*; *Journey to the End*, to *Gummy Bear and Friends*, that are
 safe, fun, and without violence, negative stereotypes, or objectionable language.

24 Though we can't compare ourselves to linear cable channels, it should be noted
 25 that when Disney Channel, Nickelodeon, and Cartoon Network all went on the
 26 air, they started with a 10 million order of magnitude subscribers. *Kartoon*
 27 *Channel!* is an 'on-demand' channel which means like Netflix, we offer a *menu*
 of offerings and the *viewer* then determines which program he or she chooses to
 watch. Having said the above, *when Kartoon Channel!* goes live on June 15, it will
 28 be available in over 100 million U.S. television households, and over 200 million

mobile devices. All free to the viewer. All ad-supported (with the exception of a small tranche of platforms, where the viewer can elect an SVOD option with no commercials). If you have Amazon Prime, you can see it. If you have Apple TV, you can see it. If you have Comcast, Cox, or DISH and Sling TV, you can see it. I cannot recall any children's channel ever starting with such complete distribution, on Day 1, *and let alone, at a time when the demand could not possibly be higher.*

124. Defendants Heyward and Denton signed the 1Q2020 10-Q along with certifications pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act as well as the SOX attesting to the accuracy of the financial statements contained therein, the disclosure of any material changes to the Company's internal controls, and the disclosure of any fraud committed by the Company, its officers, or its directors.

125. With regard to the Company's internal controls, the 1Q2020 10-Q stated the following:

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended March 31, 2020, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

126. The Individual Defendants caused the Company to file the May 19 Offering Documents with the SEC in connection with the Company's direct offering of shares of its common stock on or about May 19, 2020. In pertinent part, the May 19 Offering Documents stated:

Content in Production

Rainbow Rangers Season 2: From Shane Morris, the writer of *Frozen*, and Rob Minkoff, the director of *The Lion King*, *Rainbow Rangers* is an animated series about the adventures of seven magical girls from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers serve as Earth's guardians and first-responders. When there's trouble for the people or animals of the Earth, the Rangers ride a rainbow across the sky to save the day. We have partnered with Mattel Inc.'s Fisher Price Toys as the master toy partner for the series, and Viacom's Nick Jr. has licensed the series for broadcast in the US. Numerous

1 international broadcast agreements have been signed and several more are
 2 currently being negotiated in various territories. Viacom has ordered a second
 3 season of the series consisting of 26 half- hour episodes that are currently in
 4 production, the first of which have been delivered.

5 Already Released Content

6 *Rainbow Rangers*: The series premiered on Nick Jr. in November 2018 and we
 7 completed 26 half hour episodes in February 2019. The series was created by Shane
 8 Morris, the co-writer of *Frozen*, and Rob Minkoff, the director of *The Lion King*,
 9 *Rainbow Rangers* is an animated series about the adventures of seven magical girls
 10 from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers
 11 serve as Earth's guardians and first-responders. When there's trouble for the people
 12 or animals of the Earth, the Rangers ride a rainbow across the sky to save the day.
 13 A global licensing program is in place and the first products will be introduced to
 14 the market in second quarter of 2019.

15 127. The May 19 Offering Documents failed to correct or clarify statements made in
 16 the March 17 Press Release, providing only a generic update of *Rainbow Rangers*, the Company's
 17 flagship product. The incorrect or misleading statements regarding increased broadcasting or the
 18 status of negotiations with Nickelodeon pertaining to the renewal of *Rainbow Rangers* for a third
 19 season were not addressed.

20 128. The Individual Defendants caused the Company to file the May 29 Offering
 21 Documents with the SEC in connection with the Company's direct offering of shares of its
 22 common stock on or about May 29, 2020. In pertinent part, the May 29 Offering Documents
 23 stated:

24 Content in Production

25 *Rainbow Rangers Season 2*: From Shane Morris, the writer of *Frozen*, and Rob
 26 Minkoff, the director of *The Lion King*, *Rainbow Rangers* is an animated series
 27 about the adventures of seven magical girls from Kaleidoscopia, a fantastic land on
 28 the other side of the rainbow. The Rangers serve as Earth's guardians and first-
 responders. When there's trouble for the people or animals of the Earth, the
 Rangers ride a rainbow across the sky to save the day. We have partnered with
 Mattel Inc.'s Fisher Price Toys as the master toy partner for the series, and
 Viacom's Nick Jr. has licensed the series for broadcast in the US. Numerous

international broadcast agreements have been signed and several more are currently being negotiated in various territories. Viacom has ordered a second season of the series consisting of 26 half-hour episodes that are currently in production, the first of which have been delivered.

Already Released Content

Rainbow Rangers: The series premiered on Nick Jr. in November 2018 and we completed 26 half hour episodes in February 2019. The series was created by Shane Morris, the co-writer of *Frozen*, and Rob Minkoff, the director of *The Lion King*. *Rainbow Rangers* is an animated series about the adventures of seven magical girls from Kaleidoscopia, a fantastic land on the other side of the rainbow. The Rangers serve as Earth's guardians and first-responders. When there's trouble for the people or animals of the Earth, the Rangers ride a rainbow across the sky to save the day. A global licensing program is in place and the first products will be introduced to the market in second quarter of 2019.

129. The May 29 Offering Documents failed to correct or clarify statements made in the March 17 Press Release, providing only a generic update of *Rainbow Rangers*, the Company's flagship product. The incorrect or misleading statements regarding increased broadcasting or the status of negotiations with Nickelodeon pertaining to the renewal of *Rainbow Rangers* for a third season were not addressed.

130. The Company issued a press release on June 5, 2020 in which defendant Heyward commented, in relevant part:

There is a huge appetite for quality children's content that is family- friendly and safe. **No less important, is having it available for free and with no subscription fees** will be compelling now to more and more parents who are looking to provide quality children's entertainment options for their kids. It will be equally important to advertisers, who are increasingly finding fewer channels to reach viewers, in a universe dominated by pay services such as Netflix and Disney+. ***Kartoon Channel!* will be like a 'Netflix for kids, except it is free.**

(Emphasis added.)

131. Later that day, June 5, 2020, defendant Heyward penned a letter to shareholders, in which he wrote, in pertinent part:

1 We previously described Kartoon Channel! like “a Netflix for kids, but its free.”
 2 Our model is what is called in the industry, AVOD (Advertiser Video On Demand).
 3 There is an important significance to this, which in today’s children’s broadcast
 4 world, brings powerful ‘wind to our sails’.

5 1. Netflix and Disney +, viewership is dramatically up, because people are staying
 6 at home more. For a combination of COVID-19 and social reasons, this is even
 7 more so for children’s TV (e.g. most schools closed, many summer camps have
 8 been canceled).

9 2. Children’s Advertiser Demand is UP, while Available Inventory is Scarce.
 10 Inventory is scarce, because more and more kids have migrated from linear
 11 channels to On Demand channels and much of that On Demand viewing is on
 12 Netflix and on Disney+ where there is no advertising. The result is that advertisers
 13 need to scramble to find commercial inventory and ‘eyeballs’ through which to
 14 promote their products, and brands.

15 Kartoon Channel! will launch with a number of ‘programming events’, which we
 16 believe will be extremely compelling for kids, and which we will announce for you
 17 the week before launch.

18 132. The statements and omissions referenced in ¶¶ 107-131 herein were materially false
 19 and misleading and failed to disclose material facts necessary to make the statements made not
 20 false and misleading. Specifically, the Individual Defendants willfully or recklessly made and/or
 21 caused the Company to make false and misleading statements to the investing public, including:
 22 (1) failing to disclose that Rainbow Rangers had not been renewed for a new season on Nick Jr.;
 23 (2) failing to disclose that Rainbow Rangers was airing on Nickelodeon only nine times per week,
 24 rather than 26 times as Genius had previously represented, and at unfavorable time slots; (3) not
 25 disclosing that the economic terms of the deal with Llama Llama, and it did not own the intellectual
 26 property for Llama Llama and merely licensed it; (4) failing to disclose that a new wave of selling
 27 was likely to pummel the Company’s stock as its financial backers sought to lock in profits; (5)
 28 posting Stan Lee’s Superhero Kindergarten as content on Amazon as self-marketing for the show,
 which was a far less desirable accomplishment than previously represented; (6) implying Genius
 had the potential to, like the Walt Disney Company, earn billions of dollars in revenue from the

1 box office, even though Genius had been attempting to launch a show with Stan Lee as early as
 2 2011 and had no meaningful commercial success since that time, let alone the “billions of dollars”
 3 of success; and (7) failing to disclose how Mr. Lee’s passing would impact Genius’s purported
 4 ability to replicate Disney’s success.

5 **The Truth Gradually Emerges as False and Misleading Statements Continue**

6
 7 133. On June 4, 2020, Citron Research (“Citron”) questioned the valuation of the
 8 Company. Specifically, among other things, Citron posted several critical comments on social
 9 media, including a posting that read “\$GNUS to \$1...fast the lowest form of retail investor.
 10 Consider: LTM \$GNUS rev \$5 mil mkt cap \$800 mil compared to leader WildBrain (teletubbies)
 11 LTM revenue of \$332 million mkt cap \$175 mil Not to mention massive dilution at \$GNUS. Stock
 12 Promotion.”

13
 14 134. Hindenburg Research published the Hindenburg Report on June 5, 2020,
 15 challenging the Company’s recently inflated valuation and revealing inaccuracies in the
 16 Company’s public statements.

17
 18 135. Regarding Rainbow Ranger, the Company’s flagship show, the Hindenburg
 19 Report unveiled, in relevant part, that:

20 **Rainbow Rangers—The Company Has Boasted That the Show Is Currently**
 21 **Airing on Nick Jr. True, But It Appears Once Per Day During the Week at**
 22 **3:49AM EST And Three Times On Sundays. The Show Is Currently Not**
Yet Slated For a 3rd Season and It Is Unclear Whether It Will Be Renewed.

23 Rainbow Rangers is another key show for the company, and in this case Genius *does*
 24 own the intellectual property behind the show, making it perhaps the company’s
 25 most economically relevant property. It airs on Nick Jr. and has completed 2
 seasons to date.

26 The company made a big deal about its pick-up by Nick Jr. in a January 2019 press
 27 release announcing that the show had 455,000 viewers in its premiere:
 28

1 *"We have just received the Nielsen ratings for our latest premiere episode*
 2 *(Sunday, Jan. 6) of Rainbow Rangers on Nick Jr., which generate our highest*
 premiere episode rating to date with 455,000 viewers!"

3 *The premiere episodes are broadcast on Sundays at 11:30 AM, and the encore*
 4 *episodes are broadcast Monday through Friday in the afternoon.*

5 *And, the strong and growing viewership on Nick Jr. points to an increasing appetite*
 6 *by kids for Rainbow Rangers and the coming tsunami of products at retail." The*
 press release says.

7 **Then, the company stated in March 2020 that it was airing 26 times per week,**
 8 giving it broad coverage in apparently favorable time slots:

9 *"Monday-Friday, four airings per day, and six airings on the weekends. The*
 10 *animated action-adventure series premiered on Nick Jr. in November 2018 with*
 11 *five airings per week and has consistently achieved high ratings with its target*
 demo of Girls 2–5-years-old."

12 **But the Rainbow Rangers schedule now says otherwise. Most weekdays look**
 13 **like this schedule, from yesterday, where the show has one time slot on Nick Jr.**
 at 3:49AM EST.

14 ////

15 ////

16 ////

17 ////

18 ////

19 ////

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22 ////

23 ////

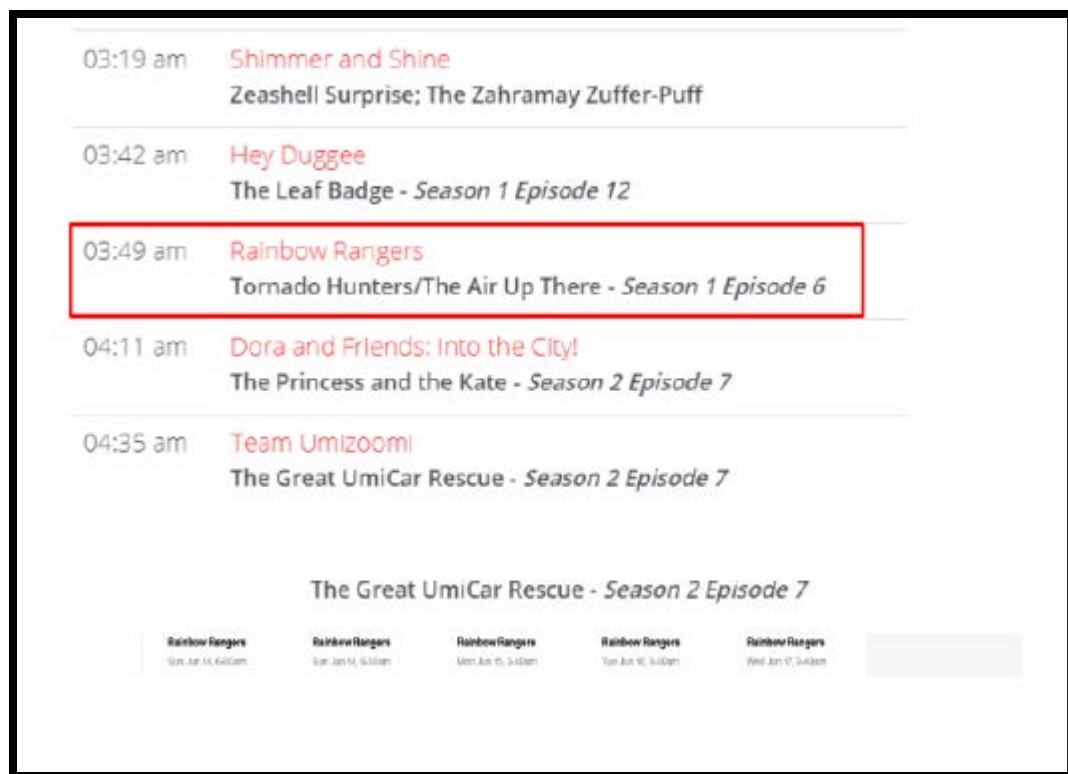
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28



Several platforms show us the same, **indicating it airs 9 times per week, instead of 26**: each morning at 3:49am and then twice additionally on Sunday mornings at 6:00am and 6:30am EST. We emailed the company to ask about its current number of airings and have not heard back as of this writing.

As Genius's CEO said in the March 2020 press release regarding the show being aired 26 times:

"Needless to say, leading broadcasters like Nickelodeon don't make schedule changes of this magnitude without good reason..."

He has not commented thus far on the "good reason" for the show airing in the witching hours of early morning only 9 times per week.

Similarly, there is no indication that a Season 3 has been picked up by Nick Jr. We e-mailed both Nick Jr. the company to try to get confirmation of a Season 3 but investor relations simply stated that negotiations were "underway".

We find it surprising that Nick Jr. is still in negotiations. Other shows such as "PAW Patrol" "Blues Clues" and "Bubble Guppies" were already announced as being picked up by Nickelodeon in February. Season 2 of Rainbow Rangers was

1 ordered in April of 2019 in preparation for its release in October. We are now in
2 June 2020 with no word on the series heading into the fall.

3 136. In response to this news, the price of the Company's common stock dropped from
4 \$6.86 per share at the close of trading on June 4, 2020, to \$5.94 per share at the close of trading
5 on June 5, 2020, a decrease of roughly 13%.

6 137. Defendant Heyward stated the following in the June 8 Press Release in response
7 to the Hindenburg Report:

8 **We are well positioned to create substantial value** – With Kartoon Channel!
9 launching on June 15 and to be available in more than 100 million U.S. TV
10 households and 200 million mobile devices, we are positioned to be one of the
11 preeminent ad-supported kids' digital *networks*. The service referred to as a
12 'Netflix for kids' is made even stronger by the distinct fact that it is a free service.
13 There are no subscriptions fees, it is ad-supported.

14 138. The Company filed the June 11 Form 424B3 in which it incorporated by reference
15 the 2019 10-K, the 2020 Proxy Statement, the May 7 Form 8-K, the May 18 Form 8-K, May 28
16 Form 8-K. As set forth herein, the June 11 Form 424B3 fails to correct or clarify previous false
17 and misleading statements made in the foregoing documents.

18 139. On June 12, 2020, in a press release titled "Genius Brands International Launches
19 The New 'Kartoon Channel!' Monday June 15 in Over 100 Million U.S. Television Households
20 and 200 Million Mobile Devices with Over 4,000 Episodes of Family-Friendly Content" (the "June
21 12 Press Release") the Company announced the launch of its "new free digital" channel, Kartoon
22 Channel!. In pertinent part, the June 12 Press Release stated:

23 Described as like a '*Netflix for kids, but free,*' *Kartoon Channel!* will have many
24 of the world's most recognized children's brands, from many of the world's
25 most successful creators of children's and family content. With *content* coming
26 from the late Stan Lee, for example, *distribution* through the likes of Amazon
27 Prime/Amazon Fire, Apple TV/Apple IOS, Android, Roku and DISH, among
28 others; and *proven value building programmers*...like Margaret, David, and
 Caroline, this is like putting rocket fuel in a Ferrari and having the
 Championship Formula 1 driving team at the wheel...

* * *

“Unlike other subscription services, *Kartoon Channel!* is an *ad-supported service and will be 100% free, making it available to all*. We believe that is particularly meaningful in these times where many kids are home from school and summer camps, viewership is up, and parents are looking to find cost effective ways to provide positive entertainment. [The channel will go live on Monday with immediate access to the services and more rolling out.]”

140. The Company launched its *Kartoon Channel!* on or about June 15, 2020, on various digital platforms including Amazon Channels, the suite of add-on channels available to subscribers of Amazon Prime. However, in contrast to the repeated statements of defendants Heyward and Loesch and Company press releases, *Kartoon Channel!* came with a price tag of \$3.99 per month on top of the cost an Amazon Prime Membership.



141. Upon launch, investors were soon to realize *Kartoon Channel!* was only available to Amazon Prime members as an add-on channel with an additional subscription fee.⁴ This was in sharp contrast to the repeated statements of the Individual Defendants.

⁴ Dan Ariely, *PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS* (2d ed. 2010) (explaining the power of “free” demonstrates that “free” is far more effective than “almost free”).

1 142. In response to this news, the price of the Company's common stock dropped from
 2 \$4.41 per share at the close of trading on June 15, 2020, to an intra-day low of \$3.75 per share, or
 3 a loss of almost 15%, before closing at \$3.85 per share at the close of trading on June 16, 2020, a
 4 decrease of nearly 13% in value.

5 143. Despite the truth being revealed to investors that Genius's *Kartoon Channel!*, was
 6 not in fact free, the Company persisted to market *Kartoon Channel!* as "ad-supported" and "**Fun,**
 7 **Family Friendly, and "FREE!!!", "FREE", or "Netflix for Kids, but Free" in its July 2020**
 8 Investor Presentation and press releases published on July 27, 2020, August 10, 2020, and August
 9 13, 2020.

10 144. The Company circulated a press release on June 16, 2020 (the "June 16 Press
 11 Release") announcing the new programming slate of content for *Kartoon Channel!*, in which
 12 defendant Heyward stated, in pertinent part:

13 "*Kartoon Channel!*, our 24-hour, free, video on demand, children's program
 14 service went live this morning with unprecedented distribution reach, and an
 15 unprecedented initial content lineup."

16 "Kids and their parents want uplifting stories. They want positive messages,"
 17 added Heyward. "**It is also important to us that *Kartoon Channel!* is free and**
 18 ***available to everyone*.** It is no less important that the stories are positive and with
 19 enriching lessons, whenever possible."

20 ***

21 Defendant Loesch further stated, in relevant part, that "Having produced and
 22 broadcast thousands of children's episodes across a number of the kid's networks,
 23 we wanted to make *Kartoon Channel!* stand out as a brand, **not just because it is**
 24 **free and available to everyone**, but by putting on shows, which tell *positive stories*.
 25 That is very very important to us."

26 (Emphasis added in bold, not italics.)
 27
 28

1 statements made not false and misleading. Specifically, the Individual Defendants willfully or
 2 recklessly made and/or caused the Company to make false and misleading statements to the
 3 investing public, including: (1) failing to disclose that Rainbow Rangers had not been renewed for
 4 a new season on Nick Jr.; (2) failing to disclose that Rainbow Rangers was airing on Nickelodeon
 5 only nine times per week, rather than 26 times as Genius had previously represented, and at
 6 unfavorable time slots; (3) not disclosing that the economic terms of the deal with Llama Llama,
 7 and it did not own the intellectual property for Llama Llama and merely licensed it; (4) failing to
 8 disclose that a new wave of selling was likely to pummel the Company's stock as its financial
 9 backers sought to lock in profits; (5) posting Stan Lee's Superhero Kindergarten as content on
 10 Amazon as self-marketing for the show, which was a far less desirable accomplishment than
 11 previously represented; (6) implying Genius had the potential to, like the Walt Disney Company,
 12 earn billions of dollars in revenue from the box office, even though Genius had been attempting to
 13 launch a show with Stan Lee as early as 2011 and had no meaningful commercial success since
 14 that time, let alone the "billions of dollars" of success; and (7) failing to disclose how Mr. Lee's
 15 passing would impact Genius's purported ability to replicate Disney's success.

18 **The Truth Fully Emerges**

19
 20 149. The Company announced on July 2, 2020, that it would host a conference call on
 21 Monday July 6, 2020, to announce an "exciting business development" through a press release
 22 titled "Genius Brands International Chairman & CEO, Andy Heyward, to Host Conference Call to
 23 Discuss Key Business Development."

24 *July 6 Press Release, Shareholders Letter, and Conference Call*
 25
 26
 27
 28

1 150. On July 6, 2020, the Company published a press release stating that due to
2 “unprecedented interest,” the Company had opened an online portal where investors could listen
3 to the conference call.

4 151. The ensuing conference call later that day, July 6, 2020, did not bring the
5 “exciting” or “key business” development that the July 2 Press Release promised. Instead,
6 defendant Heyward merely announced the creation of a joint venture with POW! Entertainment,
7 Stan Lee Universe, regarding the acquisition of a proprietary right in the intellectual property to
8 the unreleased and untested works created by Stan Lee after his time with Marvel Entertainment.
9

10 152. Defendant Heyward stated, in pertinent part:

11 *In all of Hollywood, there is no greater prize. This is the Holy Grail. **STAN LEE***
12 ***UNIVERSE** is a *once in a lifetime* asset, drawn from over 100 original, heretofore*
13 *unexploited properties, created by the most successful creator of intellectual*
14 *property of our time. In my view, the potential value in this single asset, is greater*
than any IP anywhere in Hollywood.

15 153. The Company reiterated defendant Heyward’s above referenced statements in a
16 press release titled “Genius Brands International Announces Transaction to Create ‘Stan Lee
17 Universe.’”

18 154. In response to this news, the price of the Company’s stock fell from \$3.55 per
19 share at the close of trading on July 2, 2020 – the prior trading day – to an intra-day low of \$2.58
20 per share, a loss of over 27%, before closing at \$2.66 per share at the end of trading on July 6,
21 2020, a drop in value of more than 25% on a massive trading volume of approximately 170 million
22 shares.
23

24 155. Later, on July 6, 2020, after the markets closed, *The Motley Fool* published an
25 article titled “Why Genius Brands Stock Plunged 25% Today”⁵ calling defendant Heyward’s
26

27 _____
28 ⁵ Available at <https://www.fool.com/investing/2020/07/06/why-genius-brands-stock-plunged-25-today.aspx> (last visited August 28, 2020).

1 words used to describe the Company's announcement earlier that day "grandiose statements" and
 2 "a little far-fetched, to say the least."

3 156. The next day, July 7, 2020, *The Motley Fool* published an article titled "Genius
 4 Brands Isn't as Smart as It Thinks It Is" (the "July 7 Motley Fool Article"),⁶ reporting that the pre-
 5 announcement hype created by the Company surrounding the news was unwarranted given the
 6 news's actual substance. The July 7 Motley Fool Article claimed, in pertinent part, that "[w]hen
 7 you take on the role of being your own hype machine, no one should be surprised when reality
 8 falls short of the promise."
 9

10 157. In pertinent part, the July 7 Motley Fool Article continued:

11 "Shares of [Genius] ... opened another 17% lower on Tuesday after failing to
 12 wow investors with a new content announcement that it had been touting since late
 13 last week."

14 The slide undoes the stock's 54% surge on Thursday (the final trading day of last
 15 week) that came after Genius scheduled a conference call for Monday morning
 16 this week to discuss what it pitched as an "exciting business development." It turned
 17 out to be "business development," but the market is arguing that the choice of
 18 "exciting" as an adjective wasn't exactly warranted.

19 **DAMAGES TO GENIUS**

20 158. As a result of the Individual Defendants' wrongful conduct, Genius disseminated
 21 false and misleading statements and omitted material information to make such statements not
 22 false and misleading when made. The improper statements have devastated Genius's credibility.
 23 Genius has been, and will continue to be, severely damaged and injured by the Individual
 24 Defendants' misconduct.
 25
 26
 27

28 ⁶ Available at <https://www.fool.com/investing/2020/07/07/genius-brands-isnt-as-smart-as-it-thinks-it-is.aspx> (last visited August 28, 2020).

1 159. Furthermore, aside from ruining the Company's reputation for honesty, integrity,
2 and aptitude, the Individual Defendants have exposed the Company to very expensive legal costs
3 to defend, investigate, and pay judgment or settlement in the Securities Class Action.

4 160. As a direct and proximate result of the Individual Defendants' actions as alleged
5 above, Genius's market capitalization has been substantially damaged, losing millions of dollars
6 in value as a result of the conduct described herein.

7
8 161. Moreover, these actions have irreparably damaged Genius's corporate image and
9 goodwill. For at least the foreseeable future, Genius will suffer from what is known as the "liar's
10 discount," a term applied to the stocks of companies who have been implicated in illegal behavior
11 and have misled the investing public, such that Genius's ability to raise equity capital or debt on
12 favorable terms in the future is now impaired.

13
14 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

15 162. Plaintiff incorporates the allegations herein by reference.

16 163. Plaintiff brings this action derivatively in the right and for the benefit of the
17 Company to redress the Individual Defendants' breaches of fiduciary duties and other violations
18 of the law.

19
20 164. Plaintiff is a stockholder of Genius, was a stockholder of Genius at the time of the
21 wrongdoing alleged herein and has been a stockholder of Genius continuously since that time.

22 165. Plaintiff will adequately and fairly represent the interests of the Company and its
23 stockholders in enforcing and prosecuting its rights.

24
25 166. As a result of the facts set forth herein, Plaintiff has not made any demand on the
26 Genius Board to institute this action against the Individual Defendants. A pre-suit demand on the
27 Board of Genius is futile and, therefore, excused.

1 167. At the time of filing of this action, the Board consists of defendants Heyward,
 2 Davis, Hallren, Klein, Loesch, Segall, and Thomopoulos (the “Director Defendants”), along with
 3 non-party Karen McTier (together with the Director-Defendants, the “Directors”). Plaintiff needs
 4 only to allege demand futility as to four of the eight Directors that were on the Board at the time this
 5 action was commenced.

6
 7 **Demand Is Futile as to All Director Defendants**
 8 **Because They Each Face a Substantial Likelihood of Liability**

9 168. The Individual Defendants all face a substantial likelihood of liability for their
 10 individual misconduct. The Director Defendants were directors throughout the time of the false
 11 and misleading statements, and as such had a fiduciary duty to ensure that the Company’s SEC
 12 filings, press releases, and other public statements and presentations on behalf of the Company
 13 concerning its business, operations, prospects, internal controls, and financial statements were
 14 accurate.

15 169. Moreover, as directors, the Director Defendants owed a duty to, in good faith and
 16 with due diligence, exercise reasonable inquiry, oversight, and supervision to ensure that the
 17 Company’s internal controls were sufficiently robust and effective (and were being implemented
 18 effectively), and to ensure that the Board’s duties were being discharged in good faith and with
 19 the required diligence and due care. Instead, the Director Defendants knowingly and/or recklessly
 20 allowed, made or authorized false and misleading statements, failed to timely correct such
 21 statements, failed to take necessary and appropriate steps to ensure that the Company’s internal
 22 controls were sufficiently robust and effective (and were being implemented effectively), and
 23 failed to take necessary and appropriate steps to ensure that the Board’s duties were being
 24 discharged in good faith and with the required diligence. These actions constitute breaches of the
 25 fiduciary duties of loyalty and good faith, for which the Individual Defendants face a substantial
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 27
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1 likelihood of liability. If the Director Defendants were to bring a suit on behalf of Genius to
 2 recover damages sustained as a result of this misconduct, they would expose themselves to
 3 significant liability. This is something they will not do. For this reason, demand is futile as to the
 4 Individual Defendants.

5 170. Further, the Director Defendants all signed the 2019 10-K, and thus personally
 6 made the false and misleading statements in the 2019 10-K.
 7

8 171. Further, defendant Heyward is incapable of considering a demand to commence
 9 and vigorously prosecute this action because he is the founder of the Company and has served
 10 as the Company's Chairman of the Board and CEO since 2013. Indeed, the Company admits
 11 that Heyward is not independent. The Company provides defendant Heyward with his
 12 principal occupation, and he receives handsome compensation, including \$411,500 during
 13 fiscal year 2019. Defendant Heyward also received proceeds of over \$1.3 million as a result of
 14 an insider transaction executed during the period when the Company's stock price was
 15 artificially inflated due to the false and misleading statements alleged herein. Therefore, demand
 16 in this case is futile as to him, and thus excused.
 17

18
 19 **Demand Is Excused as to Defendants Davis and Heyward**
Because of Their Overlapping Business Affiliation with Each Other

20 172. Demand is excused as to defendants Davis and Heyward because of their
 21 overlapping business affiliations. Due to their close relationships, and conflicts of interests arising
 22 therefrom, defendants Davis and Heyward cannot take the necessary and proper steps to
 23 investigate and remedy the Individual Defendants' wrongdoing. Defendant Heyward is the co-
 24 founder and served as the CEO of DIC Animation City until its sale to Capital Cities/ABC, Inc.,
 25 where defendant Davis had served as a member director. Defendants Davis and Heyward are
 26
 27
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1 incapable of independently and impartially consider a demand to commence and vigorously
2 prosecute this action.

3 **Demand Is Excused as to the Audit Committee Defendants**
4 **Because They Face a Substantial Likelihood of Liability**

5 173. As members of the Audit Committee during the Relevant Period, the Audit
6 Committee Defendants participated in and knowingly approved the filing of false financial
7 statements and allowed the Individual Defendants to repeatedly make other false and misleading
8 statements to the investing public. More specifically, as members of the Audit Committee, the
9 Audit Committee Defendants were obligated to oversee and monitor (a) the integrity of the
10 Company's financial statements, and (b) the Company's compliance with legal and regulatory
11 requirements. Instead, the Audit Committee Defendants failed to ensure the integrity of the
12 Company's financial statements and financial reporting process, the Company's systems of
13 internal accounting and financial controls, and compliance with legal and regulatory requirements,
14 as required by the Charter. For this reason, demand is futile as to the Audit Committee Defendants.
15

16
17 **FIRST CLAIM**

18 **Against Individual Defendants for Violations of**
19 **Section 14(a) of the Exchange Act**

20 174. Plaintiff incorporates by reference and re-alleges each and every allegation set
21 forth above, as though fully set forth herein.

22 175. The Section 14(a) Exchange Act claims alleged herein are based solely on
23 negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf
24 of the Individual Defendants. The Section 14(a) claims alleged herein do not allege and do not
25 sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of,
26 or reference to any allegation of fraud, scienter, or recklessness with regard to these nonfraud
27 claims.
28

1 176. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall
2 be unlawful for any person, by use of the mails or by any means or instrumentality of interstate
3 commerce or of any facility of a national securities exchange or otherwise, in contravention of
4 such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public
5 interest or for the protection of investors, to solicit or to permit the use of his name to solicit any
6 proxy or consent or authorization in respect of any security (other than an exempted security)
7 registered pursuant to section 12 of this title [15 U.S.C. § 78l].”

9 177. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that
10 no proxy statement shall contain “any statement which, at the time and in the light of the
11 circumstances under which it is made, is false or misleading with respect to any material fact, or
12 which omits to state any material fact necessary in order to make the statements therein not false
13 or misleading.” 17 C.F.R. § 240.14a-9.

15 178. Under the direction and watch of the Directors, the 2020 Proxy Statement
16 failed to disclose, *inter alia*, that: (1) Rainbow Rangers was airing on Nickelodeon only nine
17 times per week, rather than 26 times as Genius had previously represented, and at unfavorable
18 time slots; (2) Kartoon Channel! would be available to Amazon Prime members only as an add-
19 on channel for an additional subscription fee; (3) Kartoon Channel! platform was not as robust
20 of an offering as the Individual Defendants purported; (4) the commercial viability of the Company
21 was overstated in light of the true accuracy of the Company’s products and assets; and (5) the
22 Company failed to maintain internal controls. Due to the foregoing, the Company’s public
23 statements were materially false and misleading at all relevant times.

26 179. The Individual Defendants also caused the 2020 Proxy Statement to be false and
27 misleading with regard to executive compensation in that they purported to employ “pay-for-
28

1 performance” elements, while failing to disclose that the Company’s financial prospects were
2 misrepresented as a result of false and misleading statements, causing the Company’s share price
3 to be artificially inflated and allowing the Individual Defendants to wrongfully benefit from the
4 fraud alleged herein.

5 180. Moreover, the 2020 Proxy Statement was false and misleading when it discussed
6 the Company’s adherence to specific governance policies and procedures, due to the Individual
7 Defendants’ failures to abide by them and their engagement in the scheme to issue false and
8 misleading statements and omissions of material fact.

10 181. In the exercise of reasonable care, the Individual Defendants should have
11 known that by misrepresenting or failing to disclose the foregoing material facts, the
12 statements contained in the 2020 Proxy Statement were materially false and misleading. The
13 misrepresentations and omissions were material to Plaintiff in voting on the matters set forth for
14 shareholder determination in the 2020 Proxy Statement, including, but not limited to, election
15 of directors, approval of the Issuance Proposal 1, approval of the Issuance Proposal 2, approval
16 of the Amendment Proposal, ratification of the Company’s independent auditor, and advisory
17 approval of executive compensation.

18 182. The false and misleading elements of the 2020 Proxy Statement led to the
19 approval of Issuance Proposals 1 and 2, rejection of the Amendment Proposal, and to the re-
20 election of defendants Heyward, Davis, Hallren, Klein, Loesch, Segall, and Thomopoulos,
21 which allowed them to continue breaching their fiduciary duties to Genius.

22 183. The Company was damaged as a result of the Individual Defendants’ material
23 misrepresentations and omissions in the 2020 Proxy Statement.

24 184. Plaintiff on behalf of Genius has no adequate remedy at law.
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SECOND CLAIM

Against Individual Defendants for Breach of Fiduciary Duty

185. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

186. Each Individual Defendant owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Genius's business and affairs.

187. Each of the Individual Defendants violated and breached his or her fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

188. The Individual Defendants' conduct set forth herein was due to their intentional or reckless breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights and interests of Genius.

189. In breach of their fiduciary duties, the Individual Defendants failed to maintain an adequate system of oversight, disclosure controls and procedures, and internal controls.

190. In further breach of their fiduciary duties owed to Genius, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and misleading statements and omissions of material fact that failed to disclose, *inter alia*, that: (1) Rainbow Rangers was airing on Nickelodeon only nine times per week, rather than 26 times as Genius had previously represented, and at unfavorable time slots; (2) Kartoon Channel! would be available to Amazon Prime members only as an add-on channel for an additional subscription fee; (3) Kartoon Channel! platform was not as robust of an offering as the Individual Defendants purported; (4) the commercial viability of the Company was overstated in light of the true accuracy of the Company's products and assets; and (5) the Company failed to maintain internal

1 controls. Due to the foregoing, the Company's public statements were materially false and
2 misleading at all relevant times.

3 191. The Individual Defendants failed to correct and caused the Company to fail to
4 rectify any of the wrongs described herein or correct the false and misleading statements and
5 omissions of material fact referenced herein, rendering them personally liable to the Company
6 for breaching their fiduciary duties.
7

8 192. In breach of his fiduciary duties, one of the Individual Defendants, Heyward,
9 made a lucrative insider sale while the price of the Company's common stock was artificially
10 inflated due to the false and misleading statements of material fact discussed herein.

11 193. The Individual Defendants had actual or constructive knowledge that the
12 Company issued materially false and misleading statements, and they failed to correct the
13 Company's public statements. The Individual Defendants had actual knowledge of the
14 misrepresentations and omissions of material facts set forth herein, or acted with reckless
15 disregard for the truth, in that they failed to ascertain and to disclose such facts, even though such
16 facts were available to them. Such material misrepresentations and omissions were committed
17 knowingly or recklessly and for the purpose and effect of artificially inflating the price of the
18 Company's securities and disguising insider sales.
19
20

21 194. The Individual Defendants had actual or constructive knowledge that they had
22 caused the Company to improperly engage in the scheme set forth herein and to fail to maintain
23 adequate internal controls. The Individual Defendants had actual knowledge that the Company
24 was engaging in the scheme set forth herein, and that internal controls were not adequately
25 maintained, or acted with reckless disregard for the truth, in that they caused the Company to
26 improperly engage in the scheme and to fail to maintain adequate internal controls, even though
27
28

1 such facts were available to them. Such improper conduct was committed knowingly or recklessly
 2 and for the purpose and effect of artificially inflating the price of the Company's securities and
 3 engaging in insider sales. The Individual Defendants, in good faith, should have taken
 4 appropriate action to correct the schemes alleged herein and to prevent them from continuing to
 5 occur.

6
 7 195. These actions were not a good-faith exercise of prudent business judgment to
 8 protect and promote the Company's corporate interests.

9 196. As a direct and proximate result of the Individual Defendants' breaches of their
 10 fiduciary obligations, Genius has sustained and continues to sustain significant damages. As
 11 a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

12
 13 197. Plaintiff on behalf of Genius has no adequate remedy at law.

14 **THIRD CLAIM**

15 **Against Individual Defendants for Unjust Enrichment**

16 198. Plaintiff incorporates by reference and re-alleges each and every allegation set
 17 forth above, as though fully set forth herein.

18 199. By their wrongful acts, violations of law, and false and misleading statements and
 19 omissions of material fact that they made and/or caused to be made, the Individual Defendants
 20 were unjustly enriched at the expense of, and to the detriment of, Genius.

21
 22 200. The Individual Defendants either benefitted financially from the improper
 23 conduct and their making lucrative insider sales, received unjustly lucrative bonuses tied to the
 24 false and misleading statements, or received bonuses, stock options, or similar compensation
 25 from Genius that was tied to the performance or artificially inflated valuation of Genius, or received
 26 compensation that was unjust in light of the Individual Defendants' bad faith conduct.
 27
 28

1 201. Plaintiff, as a shareholder and representative of Genius, seeks restitution from the
2 Individual Defendants and seeks an order from this Court disgorging all profits—including
3 from insider sales, benefits, and other compensation, including any performance-based or
4 valuation-based compensation—obtained by the Individual Defendants due to their wrongful
5 conduct and breach of their fiduciary duties.

6
7 202. Plaintiff on behalf of Genius has no adequate remedy at law.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment as follows:

10 A. Declaring that Plaintiff may maintain this derivative action on behalf of
11 Genius and that Plaintiff is a proper and adequate representative of the Company;

12 B. Awarding the amount of damages sustained by the Company as a result of
13 the Individual Defendants' breaches of fiduciary duties and violations of the federal securities
14 laws;

15 C. Granting appropriate equitable relief to remedy Individual Defendants'
16 breaches of fiduciary duties and other violations of law;

17 D. Awarding to Plaintiff the costs and disbursements of the action, including
18 reasonable attorneys' fees, accountants' and experts' fees and costs and expenses; and
19

20
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28 ///

E. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: March 22, 2021

Respectfully Submitted,

LEVERTY & ASSOCIATES LAW CHTD.

/s/ William R. Ginn

Patrick R. Leverty, Esq.,

William R. Ginn, Esq.,

Reno Gould House

832 Willow Street

Reno, NV 89502

Telephone: (775) 322-6636

Facsimile: (775) 322-3953

Email: pat@levertylaw.com

bill@levertylaw.com

Attorney for Plaintiff

OF COUNSEL:

BRAGAR EAGEL & SQUIRE, P.C.

Garam Choe

810 Seventh Avenue

Suite 620

New York, New York 10019

Telephone: (212) 355-4648